

Before the
UNITED STATES COPYRIGHT ROYALTY JUDGES
LIBRARY OF CONGRESS
Washington, D.C.

In the Matter of:

**DETERMINATION OF RATES
AND TERMS FOR MAKING AND
DISTRIBUTING PHONORECORDS
(PHONORECORDS IV)**

**Docket No. 21-CRB-0001-PR
(2023-2027)**

**APPLE INC.'S AND AMAZON'S MOTION TO COMPEL
THE COPYRIGHT OWNERS TO PRODUCE DOCUMENTS**

The Judges should order the Copyright Owners to produce (1) documents concerning whether the statutory rate puts downward pressure on mechanical and performance royalties in direct negotiations (RFP 54), (2) analyses concerning the consumers' willingness to pay for interactive streaming services with HD quality audio (RFP 64), and (3) data concerning the Copyright Owners' revenues from apps that Apple, Amazon, and Google distribute (RFP 69 & 70).¹ Each of these requests directly relates to the Copyright Owners' written rebuttal statement.

With respect to RFP 54, the Copyright Owners make numerous claims that directly negotiated license agreements with publishers for interactive streaming are inappropriate benchmarks because they are negotiated against the "shadow" of the compulsory rate. *See, e.g.,*

¹ Amazon joins this Motion as to Apple RFPs 64 (HD audio), and 69-70 (app revenues). Unless otherwise specified, the RFP cites included in this Motion correspond to Apple's rebuttal discovery requests. Amazon RFP 121 corresponds to Apple RFP 64, and Amazon RFPs 123-24 correspond to Apple RFPs 69-70. If the Judges order the Copyright Owners to produce in response to these Apple RFPs, Amazon requests that they issue the same relief as to the corresponding Amazon requests.

COs' WRS Vol. III, Eisenach ¶ 127. Document request 54 seeks documents concerning whether the compulsory license, in fact, impacts negotiated rates as the Copyright Owners claim.

With respect to RFP 64, the Copyright Owners claim that Apple and Amazon underprice their interactive streaming services because they do not charge a premium for access to lossless audio. COs' WRS, Vol. II, Bebawi ¶¶ 16-17. Document request 64 seeks analyses concerning whether consumers are, in fact, willing to pay higher prices for such audio. Such documents are necessary to test the factual basis of the Copyright Owners' allegation.

Finally, with respect to RFPs 69 and 70, the Copyright Owners make numerous claims that Apple and other companies use interactive streaming to attract consumers to their ecosystems and generate revenue for their non-music business lines. In doing so, the Copyright Owners portray the music/service relationship as a one-way street in which music generates revenue in which the Copyright Owners do not participate. The requested data undermines and tests this claim. Apple and Amazon seek data showing the revenue Copyright Owners earn from the apps that Apple, Amazon, and Google distribute through their platforms. This data will show that, contrary to the Copyright Owners' one-sided claims, significant revenue flows *in the opposite direction*. In other words, the very non-music business lines that the Copyright Owners claim profit off music actually create revenue *for the Copyright Owners* by making the use of apps possible. The Copyright Owners cannot make broad claims about the Services' non-music businesses, yet refuse to respond to discovery showing how these non-music businesses benefit Copyright Owners. It is like permitting the Copyright Owners to argue their costs without allowing discovery into their profits.

For the reasons stated herein, Apple respectfully requests that the Judges grant its motion to compel documents.

BACKGROUND

On April 22, 2022, the participants in this proceeding served their Written Rebuttal Statements. On May 3, 2022, Apple served rebuttal requests for production on the Copyright Owners. Mazzello Decl., Ex. A (Apple's Rebuttal Requests for Production to COs). Pursuant to agreement of the parties, ten days later, the Copyright Owners served their objections and responses, refusing to respond to the vast majority of Apple's requests. *Id.* Ex. B (COs' Objections and Responses to Apple's Rebuttal Requests for Production).

On May 17, 2022, Apple (along with the other services in this proceeding) and the Copyright Owners met and conferred regarding the Copyright Owners' responses and objections to Apple's rebuttal requests for production. *See* Mazzello Decl., Ex. C (Email from M. Mazzello to M. Harris confirming meet and confer). While Apple and the Copyright Owners resolved several issues, they remain at an impasse with respect to the document requests raised herein. *Id.* Ex. D (Subsequent correspondence between M. Harris to M. Mazzello regarding meet and confer). Apple, thus, files this motion.

ARGUMENT

The Copyright Owners must produce any requested documents that are "directly related" to their Written Rebuttal Statement. 37 C.F.R. § 351.5(b)(1). "Documents directly related to a topic that a participant has put 'in issue' or made 'a part of its case' in its written testimony may also be 'directly related' to the [written testimony] and thus discoverable." Discovery Order 9, Order Granting in Part and Denying in Part Services' Omnibus Motion to Compel SoundExchange to Produce Documents, Docket No. 14-CRB-0001-WR (2016-20) at 3 (Jan. 15, 2015). Each

documents request discussed in this motion is directly related to the Copyright Owners’ Written Rebuttal Statement.

I. ANALYSES REGARDING WHETHER THE SECTION 115 LICENSE PUTS DOWNWARD PRESSURE ON MECHANICAL AND PERFORMANCE ROYALTIES DIRECTLY RELATES TO THE COPYRIGHT OWNERS’ CLAIMS ABOUT THE “SHADOW” OF THE COMPULSORY LICENSE

RFP 54: All Documents concerning the Section 115 license acting as downward pressure or a cap on Performance Royalties or Mechanical Royalties.

Apple’s rebuttal document request 54 seeks documents concerning whether the Section 115 statutory license acts as downward pressure or a cap on performance or mechanical royalties for interactive streaming. This request directly relates to the Copyright Owners’ Written Rebuttal Statement.

One of the Copyright Owners’ main rebuttal arguments is that the Services’ directly negotiated interactive streaming agreements with publishers and/or PROs are inappropriate benchmarks because those agreements were negotiated under the “shadow of the compulsory license.” Dr. Eisenach, for example, testifies that the directly negotiated agreements that Apple’s expert, Dr. Prowse, cites as benchmarks “are fundamentally flawed because they are negotiated under either the shadow of the Section 115 compulsory license, or under the shadow of the ASCAP and BMI rate courts, and thus do not reflect fair market value.” COs’ WRS Vol. III, Eisenach ¶ 127; *see also id* ¶ 108 (“Rates negotiated under the shadow of compulsory license do not reflect fair market value of the rights at issue and are therefore not appropriate benchmarks”), ¶ 124 (“rates negotiated under the shadow of the Section 115 compulsory license do not reflect fair market value of the rights at issue; therefore not appropriate benchmarks”). Mr. Brodsky, Executive Vice President, Business Affairs and General Counsel of Sony Music Publishing (“SMP”), testifies RESTRICTED

78.

Through these statements, the Copyright Owners put whether the compulsory license exerts downward pressure on mechanical and performance royalties squarely at issue. Therefore, the Copyright Owners must produce documents concerning this topic. They cannot try to discredit the Services’ license agreement benchmarks by claiming they are below fair market value due to the presence of the compulsory license, yet refuse to respond to discovery concerning whether the compulsory license, in fact, puts downward pressure on directly negotiated deals.

II. ANALYSES REGARDING CONSUMERS’ WILLINGNESS TO PAY FOR HD AUDIO DIRECTLY RELATE TO THE COPYRIGHT OWNERS’ CLAIM THAT APPLE UNDERPRICED ITS INTERACTIVE STREAMING SERVICE

RFP 64: All analyses, memoranda, presentations, studies, surveys, and research findings concerning consumers’ willingness to pay for HD quality audio. See Flynn ¶ 43; Bebawi ¶ 1.

Rebuttal document request 64 seeks analyses and other research findings concerning consumers’ willingness to pay for HD quality audio offered in connection with interactive streaming services. This request also directly relates to the Copyright Owners’ Written Rebuttal Statement.

In their rebuttal testimony, the Copyright Owners state that Apple and other companies underprice their interactive streaming services because they do not charge higher subscription prices for services with HD quality audio. Antony Bebawi, SMP’s President of Global Digital, for example, testifies that Apple “heavily discounts” its music streaming service, as purportedly shown by Apple’s decision to “include access to music at a higher audio quality (including

‘lossless’ and ‘spatial audio’ enhancements) at no extra cost to their entire subscriber base.” COs’ WRS, Vol. II, Bebawi ¶ 16. He further claims that high quality audio had “previously commanded a substantial premium over the standard consumer price in the market[.]” *Id.* Apple’s position. RESTRI

[REDACTED]. The requested discovery directly relates to the Copyright Owners’ statements because the discovery concerns whether consumers are willing to pay for higher quality audio, including, specifically, lossless audio. The Services must be permitted discovery into the factual basis for the Copyright Owners’ claims. Therefore, the Copyright Owners must produce the requested discovery.

III. THE COPYRIGHT OWNERS’ INCOME FROM APPS IS DIRECTLY RELATED TO THE COPYRIGHT OWNERS’ ONE-SIDED CLAIM THAT SERVICES’ NON-MUSIC BUSINESS LINES PROFIT FROM MUSIC WHEN, IN FACT, COMPLEMENTARY REVENUE FLOWS IN THE OPPOSITE DIRECTION

RFP 69: For each Music Publisher, Documents sufficient to show all revenue that Music Publisher received from apps distributed through the Apple App Store, Google Play, and Amazon, broken down monthly or at whatever level of detail such information is maintained in the ordinary course of business.

RFP 70: For each Music Publisher, Documents sufficient to show the percentage of revenue the Music Publisher received from apps distributed through the Apple App Store, Google Play, and Amazon, that is attributable to subscribers or users joining the app through the Apple App Store, Google Play, and Amazon, respectively, broken down monthly or at whatever level of detail such information is maintained in the ordinary course of business.

Apple’s rebuttal document requests 69 and 70 seek information concerning the Copyright Owners’ revenues from apps distributed by Apple, Amazon, and Google. Such information directly relates to the Copyright Owners’ argument that services receive complementary revenue from interactive streaming in which the Copyright Owners allegedly do not share. This discovery

will show that the Copyright Owners, in fact, profit immensely from the Services' non-music business lines.

As shown below, the Copyright Owners' rebuttal testimony is replete with claims that the Services use music to generate revenue for their ecosystems and/or non-music business lines and that the Copyright Owners do not share in this revenue.

- Introductory memo: “[B]ig technology firms use music to generate ecosystem value[.]” COs’ WRS, Vol. 1, Intro Memo at 6.
- Bebawi: “Apple uses (and heavily discounts) its music streaming service and other content services to help drive sales of hardware technology including iPhones and AirPods and Beats headphones, and it bundles its music streaming service (i.e., in its AppleOne bundle) as an ecosystem play.” COs’ WRS, Vol. 2, Bebawi ¶ 16.
- Brodsky: **RESTRICTED** we were acutely aware of the diminution in revenue that we knew could result from Apple’s business models, including significant discounting to generate market share (particularly as against its chief competitor, Spotify) and/or to drive sales of Apple hardware and software products. . . . For example, Apple has sought to entice purchases of its AirPods and Beats headphones and its HomePod device by offering purchasers of those products a six month free subscription to Apple Music.” COs’ WRS, Vol. 2, Brodsky ¶ 68.
- Cohan: “Apple, a multifaceted technology company, has every incentive to engage in revenue displacement (e.g., by offering discounts to Apple Music to entice purchases of Apple hardware and headphones, which I believe it does routinely)[.]” COs’ WRS, Vol. 2, Cohan ¶ 23.
- Kokakis: Describing Apple as “a multi-product, multi-service technology company that uses music to drive customers to its ecosystem and to sell them hardware and other products.” COs’ WRS, Vol. 2, Kokakis ¶ 15.
- Eisenach: “[D]isplaced and obfuscated revenues will never be included in the revenue reported by the services for the purposes of calculating royalties and will never be recovered[.]” COs’ WRS, Vol. 3, Eisenach FN 35.
- Eisenach: “Platforms are using music to exploit complementary network effects and increase the long-run value of their platform businesses such that the value they receive from their use of music is always and by design greater than the price they charge or the revenues they accrue.” COs’ WRS, Vol. 3, Eisenach ¶ 52.

- Flynn: ‘RESTRICTED COs’ WRS, Vol 3, Flynn ¶ 5.
- Watt: “There does not appear to be a reasonable way to define revenue so as to capture all gains from the venture for all services.” COs’ WRS, Vol 3, Watt ¶ 92.
- Watt: “Amazon’s incentive is to incubate [college students] in its ecosystem, the future value from that present discount is unlikely to be to the benefit of copyright owners, who do not share in the revenue from any other aspect of Amazon’s ecosystem.” COs’ WRS, Vol. 3, Watt ¶ 98.

Because the Copyright Owners assert that music drives revenue to non-music business lines (a claim Apple vigorously disputes)² and that Copyright Owners can never recover this revenue, they opened the door to discovery into the ways in which these non-music business lines drive revenue to the Copyright Owners. Otherwise, the Judges will have an inaccurate picture. In other words, the Copyright Owners cannot argue for increased royalties because interactive streaming allegedly promotes hardware sales, yet ignore that hardware, the App Store, and other technology and products that the Services provide to consumers generates revenue for Copyright Owners.

The smartphones, wearable technology, voice-activated smart speakers, on-line stores, laptops, and other devices, products, and technologies that the companies in this proceeding manufacture create hundreds of new revenue streams for Copyright Owners because these devices and technologies make it easier for consumers to stream all types of content. Consumers use the

² As just one example, the Copyright Owners claim that Apple offered a free six month subscription to Apple Music to “purchasers” of AirPods, Beats headphones, and HomePod devices to promote sales of those devices. Not so. Instead, the promotion was available to *current* owners of those devices, including people who had purchased those devices *before* the promotion was announced. Rather than using music to promote device sales, Apple was using the devices to promote its music service.

technology that companies like Apple, Amazon, and Google create to engage with social media apps, video game apps, fitness apps, non-interactive streaming apps, Karaoke apps, television streaming apps, and many other apps that *generate revenue for the Copyright Owners*. Further, many of these revenue streams simply would not exist, or would likely be much lower, without the companies in this proceeding. For example, there can be no debate that social media apps, like TikTok, television streaming apps, like Netflix, and fitness apps, like Equinox+, are more popular because consumers can use them on their smartphones and tablets.

Apple's document requests seek information regarding this revenue that Apple's, Amazon's, and Google's non-music business lines generate for the Copyright Owners. This information directly relates to the Copyright Owners' claims that interactive streaming generates revenue for non-music business lines in which the Copyright Owners "do not share" and can "never" recover. COs' WRS, Vol. 3, Eisenach FN 35 & Watt ¶ 98. Put another way, while the Copyright Owners claim that revenue flows in only one direction—from music to hardware and other non-music businesses—the requested information will show that substantial revenue actually flows from non-music business lines *back to the Copyright Owners* through the apps distributed by Apple, Google, and Amazon.

The Copyright Owners cannot hide this information from discovery. They seek large increases in mechanical royalties premised in part on the supposed financial gains that the Services' non-music business lines derive from interactive streaming. The requested discovery concerns the countervailing benefits that the Copyright Owners already derive from the non-music business lines—benefits the Services believe are likely greater than the supposed boost their non-music businesses derive from music. The requested information is necessary for an accurate

picture. The Judges cannot assess the Copyright Owners' claims about revenue displacement without understanding how the supposed complementary business lines generate income for the Copyright Owners. Accordingly, Apple's and Amazon's motion with respect to document requests 69 and 70 should be granted.

CONCLUSION

For the foregoing reasons, the Judges should grant Apple's and Amazon's motion.

Dated: March 24, 2022

Respectfully submitted,

/s/ Dale Cendali

Dale M. Cendali (N.Y. 1969070)
Claudia Ray (N.Y. 2576742)
Mary Mazzeo (N.Y. 5022306)
Johannes Doerge (N.Y. 5819172)
Kirkland & Ellis LLP
601 Lexington Avenue
New York, NY 10022
dale.cendali@kirkland.com
claudia.ray@kirkland.com
mary.mazzeo@kirkland.com
johannes.doerge@kirkland.com

Counsel for Apple Inc.

/s/ Joshua D. Branson

Joshua D. Branson (D.C. Bar No. 981623)
Aaron M. Panner (D.C. Bar No. 453608)
Leslie V. Pope (D. C. Bar No. 1014920)
Scott Angstreich (D.C. Bar No. 471085)
KELLOGG, HANSEN, TODD,
FIGEL & FREDERICK, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
Tel.: (202) 326-7900
Fax: (202) 326-7999
jbranson@kellogghansen.com
apanner@kellogghansen.com
lpope@kellogghansen.com
sangstreich@kellogghansen.com

Counsel for Amazon.com Services LLC

**Before the
UNITED STATES COPYRIGHT ROYALTY JUDGES
The Library of Congress**

In the Matter of

**DETERMINATION OF RATES AND
TERMS FOR MAKING AND
DISTRIBUTING PHONORECORDS
(PHONORECORDS IV)**

**Docket No. 21–CRB–0001–PR
(2023–2027)**

DECLARATION AND CERTIFICATION OF MARY MAZZELLO

1. I represent Apple Inc. (“Apple”) in the above-captioned proceeding. I respectfully submit this declaration and certification in support of Apple’s filing of the following documents, along with all associated exhibits, filed on May 24, 2022 pursuant to Section IV(A) of the Protective Order, dated July 20, 2021: Apple’s Motion to Compel (“Motion”) and Exhibits A through D thereto (together, the “Filings”).

2. On May 3, 2022, Apple served its First Set of Rebuttal Requests for Production of Documents to the Copyright Owners (“Rebuttal Requests”). A true and correct copy of these requests is attached hereto as Exhibit A.

3. On May 13, 2022, the Copyright Owners served upon Apple their Responses and Objections to the First Set of Rebuttal Requests for Production. A true and correct copy of these responses and objections is attached hereto as Exhibit B.

4. On May 17, 2022, Apple and the Copyright Owners met and conferred regarding the Copyright Owners’ objections to the Rebuttal Requests. Following this meet and confer, I emailed counsel for the Copyright Owners to memorialize our discussion and follow up on pending issues. A true and correct copy of this email is attached hereto as Exhibit C.

5. From May 17, 2022 to May 20, 2022, Apple and the Copyright Owners exchanged additional emails regarding these topics. A true and correct copy of these emails are attached here to as Exhibit D.

6. I, or personnel working under my supervision, have reviewed the Filings. I also have reviewed the Protective Order.

7. I have determined to the best of my knowledge, information and belief that the documents in the Filings marked “RESTRICTED — Subject to Protective Order in Docket No. 21-CRB-0001-PR (2023-27) (Phonorecords IV)” (the “Restricted Document”) are non-public and would, if disclosed, competitively disadvantage Apple, provide a competitive advantage to another participant in this proceeding, or interfere with Apple’s ability to obtain like information in the future.

8. The Restricted Documents consist of highly sensitive business information or information marked RESTRICTED by another participant in this proceeding.

9. The Restricted Documents shall be treated as “Restricted” pursuant to the terms of the Protective Order and shall not be disclosed except in accordance with the Protective Order.

Pursuant to 28 U.S.C. § 1746, I hereby declare under penalty of perjury that, to the best of my knowledge, information and belief, the foregoing is true and correct.

Dated: May 24, 2022
New York, NY

/s/ Mary Mazzello

Mary Mazzello
Kirkland & Ellis LLP
601 Lexington Avenue
New York, NY 10022
Tel: 212-446-4800
mary.mazzello@kirkland.com

Counsel for Apple Inc.

**Before the
UNITED STATES COPYRIGHT ROYALTY JUDGES
LIBRARY OF CONGRESS
Washington, D.C.**

In the Matter of:

**Determination of Royalty Rates and
Terms for Making and Distributing
Phonorecords
(*Phonorecords IV*)**

**Docket No. 21–CRB–0001–PR
(2023–2027)**

**[PROPOSED] ORDER GRANTING APPLE INC.’S AND AMAZON’S
MOTION TO COMPEL THE COPYRIGHT OWNERS TO PRODUCE DOCUMENTS**

On May 24, 2022, Apple Inc. and Amazon filed a motion requesting that the Judges compel the Copyright Owners to produce documents responsive to Apple’s Rebuttal Requests for Production Nos. 54, 64, 69, and 70 and Amazon’s corresponding Rebuttal Requests for Production Nos. 121 and 123-124.

For reasons detailed in the motion, the Judges grant the motion and order the Copyright Owners to conduct searches of Sony Music Publishing, Universal Music Publishing Group, Warner Chappell Music, Peermusic, BMG Rights Management, Kobalt Music, Round Hill Music, the National Medical Products Administration, and the Nashville Songwriters Association International for any:

1. Documents concerning the Section 115 license acting as downward pressure or a cap on Performance Royalties or Mechanical Royalties (RFP 54),
2. All analyses, memoranda, presentations, studies, surveys, and research findings concerning consumers’ willingness to pay for HD quality audio (Apple RFP 64/Amazon RFP 121), and
3. Documents sufficient to show all revenue that these music publishers received from apps distributed through the Apple App Store, Google Play, and Amazon, broken down monthly or at whatever level of detail such information is maintained in the ordinary course of business, and the percentage of such revenue that is attributable to subscribers or users joining the app through the Apple App Store, Google Play, and Amazon (Apple RFP 69 & 70/Amazon RFP 123-124).

SO ORDERED.

Hon. Suzanne M. Barnett
Chief Copyright Royalty Judge

DATED: May ___, 2022

EXHIBIT A

**Before the
UNITED STATES COPYRIGHT ROYALTY BOARD
Washington, D.C.**

<hr/>)	
)	
DETERMINATION OF RATES)	Docket No. 21-CRB-0001-PR
AND TERMS FOR MAKING AND)	(2023-2027)
DISTRIBUTING PHONORECORDS)	
(<i>Phonorecords IV</i>))	
<hr/>)	

**APPLE’S FIRST SET OF REBUTTAL REQUESTS FOR
PRODUCTION OF DOCUMENTS TO THE COPYRIGHT OWNERS**

Pursuant to Chapter 8 of the Copyright Act, 17 U.S.C. § 801 et seq.; 37 C.F.R. § 351.5; and the Copyright Royalty Judges’ (the “Judges”) Order Following April 7, 2022 Status Conference, dated April 8, 2022 (“April 8 Order”), Apple Inc. (“Apple”) hereby requests that the National Music Publishers’ Association (“NMPA”) and Nashville Songwriters Association International (“NSAI”) (collectively, the “Copyright Owners”) produce all documents responsive to this First Set of Rebuttal Requests For Production of Documents (the “Requests”), subject to the definitions and instructions set forth below. Pursuant to the April 8 Order and the parties’ email agreement, written objections and responses to these Requests must be delivered to Apple on or before May 13, 2022, and production of documents responsive to these Requests must be substantially completed by no later than May 18, 2022.

DEFINITIONS

1. The term “concerning” means relating to, discussing, describing, evidencing, constituting, comprising, memorializing, or analyzing.

2. The terms “Copyright Owners,” “You,” and “Your” mean the NMPA and the NSAI. The term “Your members” refers to the Music Publishers who are members of NMPA and any parents, subsidiaries, affiliates, or agents of each of them.

3. “Current Proceeding” refers to the current proceeding before the Copyright Royalty Board for the Determination of Rates and Terms for Making and Distributing Phonorecords (*Phonorecords IV*), Docket No. 21-CRB-0001-PR (2023-2027).

4. “Digital Music License” refers to any agreement by which the holder of a copyright in a musical composition grants, restricts, or otherwise defines the scope or terms of use of a Digital Music Licensee’s authorization to use recordings of musical compositions, whether in audio or audiovisual format, whether in whole or in part.

5. “Digital Music Licensee” means any service that transmits sound recordings or audiovisual works embodying musical compositions to the public digitally (not including services primarily engaged in the transmission of film or television), including without limitation, by way of Permanent Download, Limited Download, Interactive Stream, or Non-Interactive Stream, whether for free or by subscription, whether offering a single type of music service or bundling together different music services (*e.g.*, without limitation, offering both Interactive Streams and Non-Interactive Streams, or Interactive Streams and Permanent Downloads), and whether such transmissions are to a personal computer, television, receiver, set-top box, mobile/cellular phone, other portable device (*i.e.*, iPad, smartphone, tablet computer, laptop, etc.), in-car dashboard, connected speaker, fitness equipment, or any other electronic device or platform, and whether or not such services are accompanied by or bundled with other service offerings.

6. The terms “Document” and “Documents” shall have the same meaning as the term “document” in Rule 34(a)(1) of the Federal Rules of Civil Procedure and shall include all such items, including electronically-stored information, that would be subject to inspection and copying under that Rule, including the original and any non-identical copy of, any written, printed, typed, photographed, or recorded materials, including but not limited to writings, notes, memoranda, agreements, contracts, drafts, mark-ups, redlined materials, proposals, offers, meeting minutes, agendas, reports, calendar or diary entries, drawings, graphs, charts, logs, photographs, phone records, tape recordings, computer disks, computer printouts or tape, email, or any other data compilations from which information can be obtained or translated. The term “Document” also means every copy of a document where such a copy is not an identical duplicate of the original, whether because of deletions, underlining, showing of blind copies, initialing, signatures, receipt stamps, comments, notations, differences in stationary, or any other difference or modification of any kind. The term “Document” encompasses Communications.

7. “Interactive Stream” or “Interactive Streaming” refers to the digital transmission of a sound recording or audiovisual works embodying a musical composition to a computer or other electronic device at the specific request of an end user in order to allow the end user to listen to or view the recording or work contemporaneously with the user’s request. Interactive Streams are sometimes referred to in the industry as “on-demand” streams.

8. “Interactive Streaming Service” means any service that allows its users to access musical compositions by way of Interactive Streams (not including services primarily engaged in the transmission of film or television), without regard to whether the service provider also offers Non-Interactive Streaming or other service offerings.

9. A “Limited Download” is a digital phonorecord that is delivered electronically to a computer or other electronic device to reside there on a limited basis, such that the recipient is restricted to playing the digital phonorecord for a limited amount of time (such as, for example, for 30 days) or a limited number of times (such as, for example, 12 times), after which the digital phonorecord can no longer be played by the recipient. Limited Downloads are sometimes referred to in the industry as “tethered downloads.”

10. “Major Labels” refers to UMG Recordings, Inc., Warner Music Group Corp., and Sony Music Entertainment, and all of their affiliated Recording Companies.

11. “Mechanical License” refers to the statutory license provided by Section 115 of the Copyright Act or any agreement by which a Music Publisher or other holder of a copyright in a musical composition grants, restricts, or otherwise defines either the scope or terms of use of a license to make and distribute copies of the copyright holder’s musical composition in a phonorecord or phonorecords, whether or not the agreement also grants rights other than reproduction and distribution. It includes, for purposes of these Requests, Interactive Streaming.

12. “Mechanical Royalty” means any royalty paid pursuant to a Mechanical License.

13. “MLC” refers to the Mechanical Licensing Collective.

14. “Music Publisher” means any person, entity, or business unit that owns, controls, or administers a copyright interest in, or otherwise has the authority to grant copyright licenses with respect to, musical compositions, in whole or in part, including without limitation, any companies represented on the board of the NMPA or otherwise referenced in the Written Direct Statement of the Copyright Owners (*e.g.*, SMP, UMPG, WCM, BMG Rights Management, Downtown Music Publishing, Kobalt Music Group). Any references to a Music Publisher specifically by name shall likewise be construed to include any and all parent, subsidiary,

affiliate, successor, or predecessor companies of that Music Publisher that also serve or served as Music Publishers.

15. “NMPA” refers to the National Music Publishers’ Association, and its directors, officers, shareholders, board members, employees, personnel, subsidiaries, parents, divisions, affiliated entities, agents, servants, and anyone else acting on their behalf, as well as the Music Publishers whose executives sit on the NMPA Board of Directors.

16. “Non-Interactive Stream” or “Non-Interactive Streaming” refers to a transmission eligible for licensing pursuant to 17 U.S.C. § 114.

17. “Non-Interactive Streaming Service” means any service that makes digital audio transmissions of sound recordings embodying musical compositions by way of Non-Interactive Streams, without regard to whether the service provider also separately offers Interactive Streaming or other service offerings.

18. “NSAI” refers to the Nashville Songwriters Association International, and its directors, officers, shareholders, employees, personnel, subsidiaries, parents, divisions, affiliated entities, agents, servants, NSAI members, and anyone else acting on their behalf.

19. “Partial Phonorecords III Settlement” refers to *Determination of Royalty Rates and Terms for Making and Distributing Phonorecords (Phonorecords III); Subpart A Configurations of the Mechanical License*, 82 Fed. Reg. 15297 (Mar. 28, 2017).

20. “Performance License” refers to any agreement by which a Music Publisher, Songwriter, or other holder or administrator of a copyright in a musical composition grants, restricts, or otherwise defines either the scope or terms of use of, a license to publicly perform the copyright holder’s musical composition, whether or not the agreement also grants rights other than public performance, whether directly or through a third party such as a PRO.

21. “Performance Royalty” refers to any royalty paid pursuant to a Performance License.
22. “Performing Rights Organization” or “PRO” refers to any organization whose primary role is to collect Performance Royalties on behalf of Songwriters (*e.g.*, the American Society of Composers, Authors & Publishers (“ASCAP”), Broadcast Music, Inc. (“BMI”), the Society of European Stage Authors and Composers, and Global Music Rights (“GMR”) and its directors, officers, shareholders, board members, employees, personnel, subsidiaries, parents, divisions, affiliated entities, agents, servants, and anyone else acting on their behalf.
23. A “Permanent Download” is an individual delivery of a phonorecord by digital transmission of a sound recording embodying a musical composition that results in a reproduction made by or for the recipient which may be retained and played by the recipient on a permanent basis.
24. The term “person” is defined as any natural person or any legal entity, including without limitation, any business or governmental entity or association.
25. “Phonorecords I” refers to *In re Mechanical and Digital Phonorecord Delivery Rate Determination Proceeding*, Dkt. No. 2006-3 CRB DPRA.
26. “Phonorecords I Settlement” refers to *Mechanical and Digital Phonorecord Delivery Rate Determination Proceeding*, 74 Fed. Reg. 4510 (Jan. 26, 2009).
27. “Phonorecords II” refers to *In re Adjustment or Determination of Compulsory License Rates for Making and Distributing Phonorecords*, Dkt. No. 2001-3 CRB Phonorecords II.

28. “Phonorecords II Settlement” refers to *Adjustment of Determination of Compulsory License Rates for Mechanical and Digital Phonorecords*, 78 Fed. Reg. 67938 (Nov. 13, 2013).

29. “Phonorecords III” refers to *In re Determination of Rates and Terms for Making And Distributing Phonorecords (Phonorecords III)*, Dkt. No. 16-CRB-0003-PR, including the remand and any related appeals already decided or decided in the future.

30. “Phonorecords III Original Determination” refers to the Final Determination in *In re Determination of Rates and Terms for Making and Distributing Phonorecords (Phonorecords III)*, Docket No. 16-CRB-0003-PR (2018-2022), published at 84 Fed. Reg. 1918 (Feb. 5, 2019).

31. “Record Company” means any person, entity, or business unit that owns or administers a copyright interest in, or otherwise has the authority to grant copyright licenses with respect to, sound recordings. “Record Companies” include, but are not limited to, the Major Labels.

32. “Recording Artist” refers to any individual who performs a musical work embodied in a sound recording.

33. “Rejected Phonorecords IV Settlement” refers to the proposed partial settlement rejected in *Determination of Royalty Rates and Terms for Making and Distributing Phonorecords (Phonorecords IV)*, 87 Fed. Reg. 18342 (Mar. 30, 2022).

34. “Songwriter” refers to: (1) any individual or entity who has composed, written, or received credit for all or any portion of the music or lyrics for any musical composition, or (2) any client or royaltor of a Music Publisher entitled to receive royalties as a result of the licensing of a musical composition.

35. “Sound Recording Royalties” refers to any royalty paid pursuant to a copyright license with respect to sound recordings.

INSTRUCTIONS

1. These Requests are continuing in nature, and in the event that You become aware of additional responsive information or Documents at any time between November 2, 2021 and the time a determination is issued in the Current Proceeding, You are requested to promptly produce such additional information or Documents.

2. Each Request should be answered separately and in order. For each Request, the response must state the Documents that will be produced and by when the production will be made.

3. Responsive Documents shall be produced in a manner organized and labeled to correspond with the categories in these Requests or as kept by You in the ordinary course of business. Electronically stored information or ESI shall be produced in a format with metadata to be agreed upon by the parties or as ordered by the Judges.

4. If, based upon any objection other than a claim of privilege, You refuse to respond to any Request, state the grounds upon which such refusal is based with sufficient particularity to permit a determination of the propriety of such refusal and the manner and extent to which You will limit Your production based upon such objection. If Your objection is only to part of the Request, You must specify the part and the basis for the objection, and produce the rest of the responsive Documents.

5. If You object to any Request or sub-part thereof on a claim of any privilege, including an assertion of the attorney-client privilege or a claim that responsive Documents constitute attorney work product, You are hereby requested to provide at the time of production the basis for the asserted privilege or immunity, set forth for each withheld Document, including the following information: (i) the date of the Document; (ii) the name of the Document's

originator, the name of the person(s) to whom it is addressed, the names of all person(s) who were shown copies or to whom copies were distributed, and the names of each person participating in the preparation of the Document or in whose name the Document was prepared; (iii) a general physical description of the type of Document, and the subject matter to which it pertains; (iv) the Document's current custodian; and (v) a statement of the precise basis upon which the Document has been redacted or withheld, including the specific nature of the privilege or immunity claimed and the detailed ground for claiming such privilege or immunity.

6. Whenever appropriate in these Requests, the singular form shall include the plural and vice-versa. The connectors "and" and "or" are terms of inclusion and not exclusion, and shall be construed as necessary to bring within the scope of each Request each Document and thing that if construed otherwise might be considered to be outside of its scope. "Including" means "including but not limited to." The terms "any" and "all" shall be mutually interchangeable and shall not be construed to limit any Request.

7. If You produced Documents responsive to a Request during the Exchange of Preliminary Disclosures, You may satisfy the Request by citing to the Bates numbers of the previously produced Documents.

8. Unless otherwise specified or apparent from the nature of the Request (e.g., Requests for Documents concerning a particular settlement or event), each Request set forth below is directed to You and all of Your members, and seeks Documents dated, created, modified, or in effect from January 1, 2017 through April 22, 2022 (the "Time Period").

REQUESTS FOR DOCUMENTS

1. All currently operative agreements between Music Publishers and Songwriters. *E.g.*, Beekman WRT ¶¶ 21, 35, 44, 46, 71 (making claims about all or most songwriter agreements); Kelly WRT ¶¶ 29, 32, 36-37, 39, 59 (same).
2. All Songwriter-related documents that You agreed to produce pursuant to the compromise reached on January 14, 2022, but have thus far failed to produce. *E.g.*, Beekman WRT ¶¶ 21, 71 (specifically making sweeping claims about UMPG’s songwriter agreements); Kelly WRT ¶¶ 32, 59 n.12 (specifically making sweeping claims about SMP’s songwriter agreements).
3. All Documents concerning “the anti-piracy campaigns of the NMPA and the RIAA and their members.” Aguirre WRT ¶ 12; *see also* Brodsky WRT ¶¶ 82-83.
4. All analyses, memoranda, presentations, studies, surveys, and research findings concerning “stream ripping.” Aguirre WRT ¶ 11; *see also* Brodsky WRT ¶ 84.
5. All Documents concerning the effect that Interactive Streaming Services have had on music piracy from 2001-Present. Brodsky WRT at ¶ 82-84.
6. All Documents concerning the recording and publishing industries efforts to bring lawsuits against Napster, Grokster, MP3.com, and “against the most egregious individual users”, including but not limited to any documents and communications regarding public perception of these suits. Brodsky WRT at ¶ 83.
7. All Documents concerning the Music Publishers’ and recording industry’s “education campaign” regarding music piracy. Brodsky WRT at ¶ 83.
8. All analyses, memoranda, presentations, studies, surveys, and research findings concerning the impact of streaming on “other forms of income.” Aguirre WRT ¶ 19.

9. Documents sufficient to show all charges that You or Your members billed to or recouped from Songwriters or Recording Artists for legal fees arising out of the actions listed in Aguirre WRT ¶ 13.

10. All analyses, memoranda, presentations, studies, surveys, and research findings concerning “the negotiation and drafting of the bill that became the MMA.” Aguirre WRT ¶ 7; *see also id.* ¶ 30; Beekman WRT ¶ 57.

11. All analyses, memoranda, presentations, studies, surveys, and research findings concerning the unpaid royalties that the Services delivered to the JLI in February 2021. Aguirre WRT ¶¶ 20-24; Beekman WRT ¶¶ 56, 60; Kelly WRT ¶¶ 69, 73.

12. All Documents concerning the negotiation of the Phonorecords I Settlement or the negotiation of the Phonorecords II Settlement, Aguirre WRT ¶¶ 8, 41-45, including all Documents concerning the NMPA’s alleged perception that “nothing substantial had changed [by 2011] that made it appear that the Copyright Owners could expect that they would achieve some meaningful increase in the mechanical rate” in Phonorecords II, *id.* ¶ 41.

13. All Documents that support or contradict the assertion that UMPG “would not have agreed to the *Phonorecords II* rates under the current market conditions.” Kokakis WRT ¶ 6.

14. All Documents supporting the contention that “the complex Phonorecords II structure does not reflect the current marketplace.” Brodksy WRT at ¶ 79.

15. Documents sufficient to quantify the “costs” that the NMPA incurred in litigating Phonorecords I. Aguirre WRT ¶¶ 39-40.

16. All Documents concerning Your alleged perception that “it did not appear to be the best use of precious resources” to litigate over the Subpart A rates in *Phonorecords III*,

Aguirre WRT ¶ 44, including any forecasts or projections of the cost associated with such litigation; any forecasts or projections of the mechanical rate that You thought such litigation would obtain; and any forecasts or projections about the overall volume of sales or revenues from physical sales or permanent digitals during the time period covered by Phonorecords III.

17. All Documents concerning the negotiation of the Partial *Phonorecords III* Settlement, including all email or other communications between You and Record Companies. Aguirre WRT ¶¶ 8, 44-45.

18. All Documents concerning “the Copyright Owners’ decision to settle” with Record Companies in *Phonorecords III*, including but not limited to all Documents concerning Your “belief that mechanical income from the sale of physical recordings and digital downloads was going to continue to diminish.” Aguirre WRT ¶ 45.

19. All Documents concerning the negotiation of the Rejected Phonorecords IV Settlement, Aguirre WRT ¶¶ 8, 47-49, including all email and other communications between You and Record Companies concerning Record Companies’ alleged “adamant[] oppos[ition] to increasing” the mechanical rate for Subpart B services in the Current Proceeding, *id.* ¶ 49.

20. All analyses, memoranda, presentations, studies, surveys, and research findings concerning Your assessment of the costs or benefits of litigating the Subpart B rate in the Current Proceeding, including any analysis of where You should “allocate [Your] limited resources,” any “assessment of what sources of mechanical income were most valuable to rightsholders,” or any forecasts about the amount of resources You would have to devote to litigating any “costly and burdensome rate proceeding” with Record Companies. Aguirre WRT ¶ 47.

21. All analyses, memoranda, presentations, studies, surveys, and research findings concerning “the values that private equity investors have been paying for a certain limited number of catalogues.” Aguirre WRT ¶ 8.

22. All analyses, memoranda, presentations, studies, surveys, and research findings, concerning similarities or differences between the U.S. digital music market and the European digital music market. Bebawi WRT ¶ 8.

23. All Documents concerning the relationship between SOLAR and any music publisher. Bebawi WRT ¶ 10.

24. All Documents concerning the musical-works licensing strategy or licensing Analysis of any Music Publisher, including but not limited to all Documents concerning U.S. musical-works licensing., European musical-works licensing, audiovisual licensing, differences in licensing strategy across markets, or differences in licensing across service types (e.g., audiovisual vs. audio streaming). Bebawi WRT ¶¶ 14, 23; Kokakis WRT ¶ 50.

25. All analyses, memoranda, presentations, studies, surveys, and research findings supporting or relating to the calculations reflected in CO-Ex. 12.7. Bebawi WRT ¶ 29 n.10.

26. All analyses, memoranda, presentations, studies, surveys, and research findings concerning the evolution over time of “music publishing agreements with songwriters.” Beekman WRT ¶ 7.

27. All agreements between Songwriters and Music Publishers requiring Songwriters to reimburse expenses paid by Music Publishers in *Phonorecords I*, *Phonorecords II*, *Phonorecords III*, or the Current Proceeding. Beekman WRT ¶ 16; Kelly WRT ¶ 22.

28. All Documents concerning UMPG’s creation of the “music rights management system” referenced in paragraph 21 of the Beekman WRT.

29. All Documents concerning the two audits performed by Wayne Coleman that are discussed in the Beekman WRT. Beekman WRT ¶¶ 21, 23, 45, 47.

30. All Documents concerning claims in audits performed by Wayne Coleman for “black box” income. Beekman WRT ¶ 45.

31. Documents sufficient to identify (i) all audits that resulted in Music Publishers paying Songwriters inappropriately withheld royalties and (ii) any amounts paid to Songwriters as a result of such audits. Beekman WRT ¶ 21.

32. All analyses, memoranda, presentations, studies, surveys, and research findings of “controlled composition clauses.” Beekman WRT ¶ 32.

33. All analyses, memoranda, presentations, studies, surveys, and research findings concerning the advances that Music Publishers pay to Songwriters, including but not limited to analyses or memoranda concerning the amount of an advance that a Music Publisher should pay to a particular Songwriter. Beekman WRT ¶¶ 30, 38; Kelly WRT ¶ 66.

34. All Documents concerning the allocation of lump-sum payments, breakage, or flat fees to Songwriters. Beekman WRT ¶ 40; Kelly WRT ¶¶ 34-35.

35. Documents sufficient to show the **RESTRICTED**

[REDACTED]

[REDACTED] Beekman WRT ¶ 44.

36. Documents sufficient to show all instances in which an agreement between a Music Publisher and a Songwriter authorized the Music Publisher to charge an administrative, equivalency, or other fee or charge but the Music Publisher declined to do so. Kelly WRT ¶ 36; Beekman WRT ¶¶ 41, 44.

37. Documents sufficient to show the proportion of currently operative agreements between Music Publishers and Songwriters containing administration or equivalency fees.

Beekman WRT ¶ 41.

38. All currently operative agreements between Music Publishers and PROs, including but not limited to PRO administrative agreements. Beekman WRT ¶¶ 68-70; Kelly WRT ¶¶ 9, 49-51.

39. All Documents concerning fees charged to Music Publishers by PROs. Beekman WRS ¶¶ 67-70; Kelly WRS ¶¶ 9, 49-50, 56.

40. All analyses, memoranda, presentations, studies, surveys, and research findings concerning the revenue-related strategies allegedly employed by the Services (e.g., revenue displacement, revenue diminution, revenue deferral). *See, e.g.*, Brodsky WRT ¶ 68; Cohan WRT ¶ 23; Eisenach WRS § IV.

41. All Documents concerning the impact of “information asymmetry” on licensing negotiations. Eisenach WRS ¶¶ 109-111; *see also, e.g.*, Brodsky WRT ¶¶ 4, 7, 17; Kokakis WRT ¶ 45.

42. All Documents concerning the creation and operation of SCORE. Kelly WRT ¶¶ 12, 25-27.

43. All Documents concerning the creation and operation of the “Cash Out” service available through Score. Kelly WRT ¶ 26.

44. All analyses, memoranda, presentations, studies, surveys, and research findings concerning the business model used by “private equity and fund investors who, in recent years, have poured hundreds of millions of dollars into buying existing successful song and record

catalogues,” including but not limited to any analysis comparing these “private equity and fund investors” to traditional Music Publishers. Kelly WRT ¶ 46.

45. All analyses, memoranda, presentations, studies, surveys, and research findings concerning the relative value of Mechanical Royalties and Performance Royalties to Music Publishers and Songwriters. Kelly WRT ¶¶ 50-51.

46. All Documents concerning **RESTRICTED** referenced in paragraph 65 of the Kelly WRT.

47. All Documents proposing to give or analyzing the possibility of giving a Songwriter an advance in excess of one million dollars, including but not limited to any analysis used by a Music Publisher used for internal approvals or submitted to an affiliated company for review and approval. Beekman WRT ¶ 38.

48. All Documents concerning the creation and operation of the Songwriters Forward Initiative, including but not limited to all Documents memorializing the business rationale for creating the Songwriters Forward Initiative. Kelly WRT ¶ 67.

49. Documents sufficient to show (i) the number of Songwriters who allegedly benefited from the Songwriters Forward Initiative and (ii) the amount of each Songwriter’s unrecouped advance as of July 20, 2021. Kelly WRT ¶ 67.

50. All Documents concerning the creation and operation of the Songwriter Assistance wellness program, including but not limited to Documents sufficient to show the cost of the program. Kelly WRT ¶ 68.

51. All Documents concerning **RESTRICTED**

RESTRICTED including but not limited to

[REDACTED]. Kokakis WRT ¶¶ 23-24.

52. All Documents concerning the contemplated or actual use of a Performance License or Performance Royalties as leverage in negotiations over a Mechanical License or Mechanical Royalties. *See, e.g.*, Brodsky WRS ¶ 78 (asserting that agreements negotiated with the Services “are not appropriate benchmarks . . . as they are made under the shadow of the compulsory license”); Eisenach WRS ¶ 108 (“Rates negotiated under the shadow of compulsory license do not reflect fair market value of the rights at issue and are therefore not appropriate benchmarks.”).

53. All Documents concerning the Sound Recording Royalties charged by Record Companies to Interactive Streaming Services, including but not limited to all Documents concerning the impact of those rates (i) on the development of the interactive streaming market, (ii) on the Mechanical Royalties that music publishers are able to negotiate in the interactive streaming market, (iii) on the profitability of Music Publishers or the incomes of Songwriters; and (iii) on the profitability of Interactive Streaming Services. Eisenach WRS § VI.

54. All Documents concerning the Section 115 license acting as downward pressure or a cap on Performance Royalties or Mechanical Royalties.

55. All agreements, work papers, computer code, databases, raw data, spreadsheets, underlying analyses, and other Documents prepared, reviewed, or considered by each Copyright Owner expert witness in connection with the expert witness’s Written Rebuttal Testimony, to the extent not already produced.

56. All published or unpublished scholarly articles, or drafts of articles, written in whole or in part by each Copyright Owner expert witness that relates to the music publishing

industry, the music recording industry, Interactive Streaming Services, music piracy, radio broadcasting, cable or terrestrial television broadcasting, or the delivery of music or audiovisual content to consumers in any format and by any medium, including over the Internet, to the extent not already produced.

57. All Documents constituting or reflecting meetings, discussions or other Communications between each Copyright Owner expert witness and: (1) any fact witness; (2) any Music Publisher personnel, NMPA personnel, NSAI personnel, Music Publisher representatives, NMPA representative, or NSAI representative; and (3) any other meetings, discussions, or Communications that any Copyright Owner expert considered in formulating the expert's opinions, to the extent not already produced.

58. Each Document constituting a report, testimony (whether written or in deposition, trial, or hearing) or opinion, with exhibits, submitted by each Copyright Owner witness in any prior Copyright Arbitration Royalty Panel, Copyright Royalty Board, ASCAP, BMI, or other rate-setting or regulatory proceeding that discusses or otherwise relates to any of the subjects discussed in his or her Written Direct Testimony, as well as any such Document relating to Interactive Streaming, Non-Interactive Streaming, any Digital Music Licensee, difference among types of Digital Music Licensee, music piracy, the promotional or substitutional effect of Digital Music Licensee, the efforts of Music Publishers to have works available on any Interactive Streaming Service or terrestrial radio, Mechanical Licenses, Performance Licenses, copyright licenses with respect to sound recordings, benchmarking analyses of any type, and rate-setting analyses of any type, to the extent not already produced.

59. All analyses, memoranda, and presentations concerning the purpose of mechanical floors (e.g., a mechanical-only per-subscriber minimum) and all-in minima (e.g., an all-in per-subscriber minimum) in license agreements for Interactive Streaming, the

Phonorecords I Settlement, and the Phonorecords II Settlement, including, but not limited to, whether they are designed to protect against revenue deferral or displacement. *See, e.g.*, Brodsky ¶¶ 69-70; Cohan ¶ 23; Kokakis ¶ 13..

60. All analyses, memoranda, and presentations concerning the purpose of a Total Cost of Content rate calculation in license agreements for Interactive Streaming, the Phonorecords I Settlement, and the Phonorecords II Settlement including, but not limited to, whether it is designed to protect against revenue deferral or displacement. *See, e.g.*, Brodsky ¶ 70; Cohan ¶ 23; Kokakis ¶ 13.

61. All analyses, memoranda, presentations, studies, surveys, and research findings supporting or refuting the claim that “[v]oice control alone does not make a service less interactive or more limited[.]” Kokakis ¶ 31.

62. All analyses, memoranda, presentations, studies, surveys, and research findings supporting or refuting the claim that **RESTRICTED**

RESTRICTED Eisenach ¶ 47.

63. All analyses, memoranda, presentations, studies, surveys, and research findings supporting or refuting the claim that royalties based on a revenue prong and royalties based on per-subscriber minimum should be calibrated in license agreements related to Interactive Streaming. *See, e.g.*, Eisenach ¶ 167; Kokakis ¶ 670.

64. All analyses, memoranda, presentations, studies, surveys, and research findings concerning consumers’ willingness to pay for HD quality audio. *See* Flynn ¶ 43; Bebawi ¶ 16.

65. All Documents supporting the claim that Apple “use[s] music listening data to target and sell ads outside of music.” Heimlich ¶ 41; *see also id.* ¶ 36.

66. All analyses, memoranda, presentations, studies, surveys, and research findings concerning the impact that smartphones, smart home speakers and other smart home devices, high-quality headphones, and wearable technology have had on consumers' music listening habits, publishers' and songwriters' revenues, music distribution, and musical works licensing opportunities.

67. All Documents filed and orders issued in the *Phonorecords III* remand proceedings that have not yet been produced, including, but not limited to, the forthcoming determination in the *Phonorecords III* remand.

68. All Documents produced in the Current Proceeding.

69. For each Music Publisher, Documents sufficient to show all revenue that Music Publisher received from apps distributed through the Apple App Store, Google Play, and Amazon, broken down monthly or at whatever level of detail such information is maintained in the ordinary course of business.

70. For each Music Publisher, Documents sufficient to show the percentage of revenue the Music Publisher received from apps distributed through the Apple App Store, Google Play, and Amazon, that is attributable to subscribers or users joining the app through the Apple App Store, Google Play, and Amazon, respectively, broken down monthly or at whatever level of detail such information is maintained in the ordinary course of business.

May 3, 2022

/s/ Mary Mazzello

Dale M. Cendali (N.Y. 1969070)
Claudia Ray (N.Y. 2576742)
Mary Mazzello (N.Y. 5022306)
Johannes Doerge (N.Y. 5819172)

KIRKLAND & ELLIS LLP
601 Lexington Avenue
New York, NY 10022
Telephone: (212) 446-4800
Facsimile: (212) 446-6460
dale.cendali@kirkland.com
claudia.ray@kirkland.com
mary.mazzello@kirkland.com
johannes.doerge@kirkland.com

Attorneys for Apple Inc.

EXHIBIT B

Before the
COPYRIGHT ROYALTY BOARD
LIBRARY OF CONGRESS
Washington, D.C.

In the Matter of:

DETERMINATION OF RATES
AND TERMS FOR MAKING AND
DISTRIBUTING PHONORECORDS
(Phonorecords IV)

Docket No. 21–CRB–0001–PR (2023–2027)

**COPYRIGHT OWNERS’ RESPONSES AND OBJECTIONS TO THE FIRST
SET OF REBUTTAL REQUESTS FOR PRODUCTION FROM APPLE INC.**

Pursuant to Chapter 8 of the Copyright Act, 17 U.S.C. § 801 *et seq.*, 37 C.F.R. § 351.5; the Copyright Royalty Judges’ (the “Judges”) Order Following April 7, 2022 Status Conference, dated April 8, 2022 (“April 8 Order”) and the May 3, 2022 Stipulation between National Music Publishers’ Association (“NMPA”) and the Nashville Songwriters Association International (“NSAI” and, together with NMPA, the “Copyright Owners”), on the one hand, and Amazon.com Services LLC, Apple Inc., Google LLC, Pandora Media, LLC, and Spotify USA Inc. (collectively, the “Services”), Copyright Owners hereby submit their Responses and Objections to the First Set of Rebuttal Requests for Production of Documents (“Requests”) from Apple Inc. (“Apple” or the “Requesting Party”).

GENERAL OBJECTIONS

1. Copyright Owners object to the definition of “NMPA,” “Your Members,” “You” and “Your” in the Requests as including the music publishers whose executives sit on the NMPA Board of Directors, none of which are Participants in this proceeding. NMPA does not have possession, custody or control of the documents of its board members’ companies and is not

responding or objecting to these Requests on behalf of them. Moreover, notwithstanding the NMPA's lack of possession, custody or control over the documents of its board members' companies, the suggestion that Copyright Owners search and produce information on behalf of 20 companies in the three-week period allotted for the completion of rebuttal discovery is manifestly unreasonable, unduly burdensome and disproportionate to the needs of this proceeding. Indeed, the propounding of 70 requests to Copyright Owners as if directed to these 20 independently operated companies would comprise 1,400 distinct document requests. Music publishers peermusic, Sony Music Publishing ("SMP"), Universal Music Publishing Group ("UMPG") and Warner Chappell Music, Inc. ("WCM") (collectively, the "Publisher Witnesses"), whose executives sit on the NMPA board and who submitted Written Rebuttal Testimony in this proceeding on behalf of the Copyright Owners, will respond and/or object to these Requests, through the Publisher Witnesses' undersigned counsel, as if the Requests were made directly to each of the Publisher Witnesses.

2. Copyright Owners object to the definition of "NSAI" in the Requests as including NSAI's songwriter members. NSAI does not have possession, custody or control over the documents of its members and is responding and objecting to these Requests only on its own behalf.

3. Copyright Owners object to the definition of "Recording Artist" in the Requests as overbroad, nonspecific, and unduly burdensome.

4. Copyright Owners object to the Requests to the extent they seek the production of documents or information already produced by Copyright Owners and the Publisher Witnesses, and other music publishers, in the course of this proceeding or in the *Phonorecords III* proceeding.

Copyright Owners will not produce documents or information in response to these Requests if they previously produced such Documents.

5. Copyright Owners object to the Requests to the extent they are overly broad, unduly burdensome and harassing.

6. Copyright Owners object to the Requests to the extent they are vague, ambiguous and incomprehensible.

7. Copyright Owners object to the Requests to the extent they are duplicative.

8. Copyright Owners object to the Requests to the extent they seek broad, nonspecific discovery and discovery that is not directly related to the Written Rebuttal Statement submitted by Copyright Owners, in violation of 37 C.F.R. § 351.5(b)(1).

9. Copyright Owners object to the Requests to the extent they seek discovery that is not relevant to the willing buyer-willing seller rate standard set forth in 17 U.S.C. § 115(c)(1)(F).

10. Copyright Owners object to the Requests to the extent they call for the disclosure of materials protected by the attorney-client privilege, the work-product doctrine, or any other applicable privilege that would shield material from disclosure in whole or in part. Copyright Owners will exclude from their production all documents or parts of documents protected by any applicable privilege, doctrine or immunity.

11. Copyright Owners object to the Requests to the extent they seek the production of documents or information that is publicly available.

12. Copyright Owners object to the Requests to the extent they seek the production of documents created, generated or obtained beyond the period between January 1, 2017 and the present. Except as specifically noted otherwise below in response to specific Requests, Copyright

Owners shall produce documents created, generated or obtained between January 1, 2017 and the present.

13. Copyright Owners object to the Requests to the extent they seek the production of documents or information already in the possession of the Requesting Party or which is generated by or originated with the Requesting Party.

14. Copyright Owners object to the Requests to the extent they seek the production of documents in the possession, custody or control of third parties.

15. Use of the term “including” as used throughout this documents means “including but not limited to.”

16. Copyright Owners object to the Requests to the extent they request “all” or “any” documents or purport to impose similar obligations on Copyright Owners. Subject to their objections, Copyright Owners will search those files in their possession or control where there is a reasonable likelihood that responsive documents may be located and will make a good-faith effort to produce non-privileged, responsive documents.

17. Given the limited schedule for rebuttal discovery and for the avoidance of doubt, unless otherwise stated in response to a specific Request, Copyright Owners will not engage in extensive searches and production of internal analyses or email communications. These searches are unduly burdensome and disproportionate to the needs of the proceeding at this stage.

18. Copyright Owners object to the Requests to the extent they call for the creation of new documents, reports, spreadsheets or data compilations. Copyright Owners will produce documents generated or maintained in the ordinary course of business and will not create documents that do not presently exist.

19. Copyright Owners reserve the right to modify, supplement, or amend any or all of these responses, if necessary or appropriate, and to produce additional non-privileged, responsive documents if they are located.

20. By agreeing to conduct a reasonable search for responsive documents, Copyright Owners do not represent that any such documents exist in their possession, custody or control and, as a result, no documents may be produced notwithstanding any Copyright Owner's agreement.

21. By agreeing to conduct a reasonable search for responsive documents or information, or producing responsive documents or information, Copyright Owners do not concede either the relevance or admissibility of such documents or information and affirmatively reserve their rights to challenge or dispute the relevance or admissibility of any such documents or information.

22. These General Objections apply in response to all requests and are incorporated by reference into each and every specific objection below to the extent applicable. Various objections may be referred to in the responses below for purposes of clarity. Failure to incorporate specifically an objection, however, does not constitute a waiver of any such objection.

SPECIFIC OBJECTIONS AND RESPONSES

REQUEST NO. 1: All currently operative agreements between Music Publishers and Songwriters. *E.g.*, Beekman WRT ¶¶ 21, 35, 44, 46, 71 (making claims about all or most songwriter agreements); Kelly WRT ¶¶ 29, 32, 36-37, 39, 59 (same).

RESPONSE TO REQUEST NO. 1:

Copyright Owners object to this Request as unduly burdensome because it calls for the production of all "currently operative" agreements with Songwriters, which likely number in the hundreds of thousands. Copyright Owners further object to this Request as violative of the participants' agreement concerning the production of Songwriter-related documents, whereby the

Services proposed selections of clients for whom agreements and financial information was produced subject to such production not being unduly burdensome, which has been done. Indeed, as detailed in Copyright Owners' March 22, 2022 Memorandum in Opposition to Amazon's, Spotify's and Pandora's Motion to Compel the Copyright Owners to Produce Songwriter Documents, the production of "currently operative" songwriter agreements is, in fact, burdensome for several music publishers, as such agreements may date back decades, not exist in electronic form, and require manual review and retrieval in order to produce. Copyright Owners will not produce documents in response to this Request.

REQUEST NO. 2: All Songwriter-related documents that You agreed to produce pursuant to the compromise reached on January 14, 2022, but have thus far failed to produce. *E.g.*, Beekman WRT ¶¶ 21, 71 (specifically making sweeping claims about UMPG's songwriter agreements); Kelly WRT ¶¶ 32, 59 n.12 (specifically making sweeping claims about SMP's songwriter agreements).

RESPONSE TO REQUEST NO. 2:

Copyright Owners object to this Request as duplicative. Copyright Owners further object to this Request as it misstates the compromise reached on January 14, 2022, wherein Copyright Owners undertook to produce Songwriter-related documents to the extent such production was not unduly burdensome, which they have done. Finally, Copyright Owners object to this Request to the extent it seeks to require production of materials that are subject to a pending motion to compel before the Copyright Royalty Judges in this proceeding. Copyright Owners will not be producing documents in response to this Request.

REQUEST NO. 3: All Documents concerning "the anti-piracy campaigns of the NMPA and the RIAA and their members." Aguirre WRT ¶ 12; *see also* Brodsky WRT ¶¶ 82-83.

RESPONSE TO REQUEST NO. 3:

Copyright Owners object to this request as duplicative of prior requests in this proceeding. Copyright Owners further object to this request as unduly burdensome to the extent it calls for the

production of “[a]ll Documents.” Copyright Owners further object to this Request as unduly burdensome and disproportionate to the needs of this proceeding. Copyright Owners further object to this Request to the extent it calls for the production of publicly available information and information that was provided in connection with *Phonorecords III*. Copyright Owners will not be producing documents in response to this Request.

REQUEST NO. 4: All analyses, memoranda, presentations, studies, surveys, and research findings concerning “stream ripping.” Aguirre WRT ¶ 11; *see also* Brodsky WRT ¶ 84.

RESPONSE TO REQUEST NO. 4:

Copyright Owners object to this request as not directly related to the Written Rebuttal Statement of Copyright Owners and therefore not discoverable. Copyright Owners further object to this request as overbroad, unduly burdensome and disproportionate to the needs of the proceeding. Copyright Owners further object to this Request to the extent it calls for the production of publicly available information, information provided in connection with *Phonorecords III* and information that is or should already be in the possession of the Services. Copyright Owners will not produce documents in response to this Request.

REQUEST NO. 5: All Documents concerning the effect that Interactive Streaming Services have had on music piracy from 2001-Present. Brodsky WRT at ¶ 82-84.

RESPONSE TO REQUEST NO. 5:

Copyright Owners object to this Request as it seeks the production of information that is not directly related to its Written Rebuttal Statement and is therefore not discoverable. Copyright Owners further object to this request as duplicative of prior requests in this proceeding. Copyright Owners further object to this request as unduly burdensome to the extent it calls for the production of “[a]ll Documents.” Copyright Owners will not be producing documents in response to this Request.

REQUEST NO. 6: All Documents concerning the recording and publishing industries efforts to bring lawsuits against Napster, Grokster, MP3.com, and “against the most egregious individual users”, including but not limited to any documents and communications regarding public perception of these suits. Brodsky WRT at ¶ 83.

RESPONSE TO REQUEST NO. 6:

Copyright Owners object to this request as not directly related to the Written Rebuttal Statement of Copyright Owners and therefore not discoverable. Copyright Owners further object to this request as unduly burdensome to the extent it calls for the production of “[a]ll Documents.” Copyright Owners further object to this Request to the extent it calls for the production of publicly available information. Copyright Owners will not produce documents in response to this Request.

REQUEST NO. 7: All Documents concerning the Music Publishers’ and recording industry’s “education campaign” regarding music piracy. Brodsky WRT at ¶ 83.

RESPONSE TO REQUEST NO. 7:

Copyright Owners object to this request as not directly related to the Written Rebuttal Statement of Copyright Owners and therefore not discoverable. Copyright Owners further object to this request as unduly burdensome to the extent it calls for the production of “[a]ll Documents.” Copyright Owners further object to this Request to the extent it calls for the production of publicly available information. Copyright Owners will not produce documents in response to this Request.

REQUEST NO. 8: All analyses, memoranda, presentations, studies, surveys, and research findings concerning the impact of streaming on “other forms of income.” Aguirre WRT ¶ 19.

RESPONSE TO REQUEST NO. 8:

Copyright Owners object to this request as duplicative of prior requests in this proceeding. Copyright Owners further object to this request as overbroad, unduly burdensome and disproportionate to the needs of the proceeding. Subject to and without waiver of the foregoing objections, Copyright Owners will conduct a reasonable search for and produce documents

responsive to this Request in the possession, custody or control of the NMPA to the extent not already produced in this proceeding.

REQUEST NO. 9: Documents sufficient to show all charges that You or Your members billed to or recouped from Songwriters or Recording Artists for legal fees arising out of the actions listed in Aguirre WRT ¶ 13.

RESPONSE TO REQUEST NO. 9:

Copyright Owners object to this request as not directly related to the Written Rebuttal Statement of Copyright Owners and therefore not discoverable. Copyright Owners further object to this request as duplicative of prior requests in this proceeding, in which extensive information concerning advances, recoupment and client charges were produced. Copyright Owners further object to this request overbroad, unduly burdensome and disproportionate to the needs of the proceeding. Subject to and without waiver of the foregoing objections and General Objections and as limited thereby, Copyright Owners will produce documents that they locate following a reasonable and proportionate search of readily accessible sources.

REQUEST NO. 10: All analyses, memoranda, presentations, studies, surveys, and research findings concerning “the negotiation and drafting of the bill that became the MMA.” Aguirre WRT ¶ 7; *see also id.* ¶ 30; Beekman WRT ¶ 57.

RESPONSE TO REQUEST NO. 10:

Copyright Owners object to this request as unrelated to the Written Rebuttal Statement of Copyright Owners. Copyright Owners further object to this request as overbroad, unduly burdensome and disproportionate to the needs of the proceeding. Copyright Owners further object to this Request to the extent it seeks the production of publicly available information. Copyright Owners will not produce documents in response to this Request.

REQUEST NO. 11: All analyses, memoranda, presentations, studies, surveys, and research findings concerning the unpaid royalties that the Services delivered to the JLI in February 2021. Aguirre WRT ¶¶ 20-24; Beekman WRT ¶¶ 56, 60; Kelly WRT ¶¶ 69, 73.

RESPONSE TO REQUEST NO. 11:

Copyright Owners object to this request as not directly related to the Written Rebuttal Statement of Copyright Owners and therefore not discoverable. Copyright Owners further object to this request as overbroad, unduly burdensome and disproportionate to the needs of the proceeding. Copyright Owners further object to this Request to the extent it calls for the production of publicly available information. Copyright Owners will not produce documents in response to this Request.

REQUEST NO. 12: All Documents concerning the negotiation of the Phonorecords I Settlement or the negotiation of the Phonorecords II Settlement, Aguirre WRT ¶¶ 8, 41-45, including all Documents concerning the NMPA’s alleged perception that “nothing substantial had changed [by 2011] that made it appear that the Copyright Owners could expect that they would achieve some meaningful increase in the mechanical rate” in Phonorecords II, *id.* ¶ 41.

RESPONSE TO REQUEST NO. 12:

Copyright Owners object to this Request to the extent it seeks the production of information protected by the attorney-client privilege and/or work product doctrines. Copyright Owners further object to this Request as it seeks information unrelated to this proceeding, which the Copyright Royalty Judges have repeatedly held. Copyright Owners further object to this Request to the extent it seeks the production of information that has already been produced in this proceeding or in the *Phonorecords III* proceeding and available to the Services. Copyright Owners will not be producing documents in response to this Request.

REQUEST NO. 13: All Documents that support or contradict the assertion that UMPG “would not have agreed to the *Phonorecords II* rates under the current market conditions.” Kokakis WRT ¶ 6.

RESPONSE TO REQUEST NO. 13:

Copyright Owners object to this Request as it seeks the production of information that is not directly related to its Written Rebuttal Statement and is therefore not discoverable. Copyright

Owners further object to this Request as unduly burdensome and disproportionate to the needs of this proceeding. Copyright Owners will not be producing documents in response to this Request.

REQUEST NO. 14: All Documents supporting the contention that “the complex Phonorecords II structure does not reflect the current marketplace.” Brodksy WRT at ¶ 79.

RESPONSE TO REQUEST NO. 14:

Copyright Owners object to this Request as it seeks the production of information that is not directly related to its Written Rebuttal Statement and is therefore not discoverable. Copyright Owners further object to this Request as unduly burdensome and disproportionate to the needs of this proceeding and it duplicates evidence and testimony in the record in *Phonorecords III*, including in the remand proceeding as well as findings of the Judges in *Phonorecords III* to which the Services are invited to review. Copyright Owners will not be producing documents in response to this Request.

REQUEST NO. 15: Documents sufficient to quantify the “costs” that the NMPA incurred in litigating Phonorecords I. Aguirre WRT ¶¶ 39-40.

RESPONSE TO REQUEST NO. 15:

Copyright Owners object to this Request as it seeks the production of information that is not directly related to its Written Rebuttal Statement and is therefore not discoverable. Copyright Owners further object to this Request as unduly burdensome and disproportionate to the needs of this proceeding. Copyright Owners will not be producing documents in response to this Request.

REQUEST NO. 16: All Documents concerning Your alleged perception that “it did not appear to be the best use of precious resources” to litigate over the Subpart A rates in *Phonorecords III*, Aguirre WRT ¶ 44, including any forecasts or projections of the cost associated with such litigation; any forecasts or projections of the mechanical rate that You thought such litigation would obtain; and any forecasts or projections about the overall volume of sales or revenues from physical sales or permanent digitals during the time period covered by Phonorecords III.

RESPONSE TO REQUEST NO. 16:

Copyright Owners further object to this Request to the extent it seeks the production of information that has already been produced in this proceeding or in the *Phonorecords III* proceeding and available to the Services. Copyright Owners object to this Request to the extent it seeks the production of information protected by the attorney-client privilege and/or work product doctrines. Copyright Owners further object to this Request as it seeks information unrelated to this proceeding, which the Copyright Royalty Judges have repeatedly held. –Copyright Owners will not be producing documents in response to this Request.

REQUEST NO. 17: All Documents concerning the negotiation of the Partial *Phonorecords III* Settlement, including all email or other communications between You and Record Companies. Aguirre WRT ¶¶ 8, 44-45.

RESPONSE TO REQUEST NO. 17:

Copyright Owners object to this Request to the extent it seeks the production of information protected by the attorney-client privilege and/or work product doctrines. Copyright Owners further object to this Request as it seeks information unrelated to this proceeding, which the Copyright Royalty Judges have repeatedly held. Copyright Owners also object to this Request as it substantially duplicates a request made by the Services in *Phonorecords III* which the Judges rejected and it is, if possible, even less proper in this proceeding. Copyright Owners will not be producing documents in response to this Request.

REQUEST NO. 18: All Documents concerning “the Copyright Owners’ decision to settle” with Record Companies in *Phonorecords III*, including but not limited to all Documents concerning Your “belief that mechanical income from the sale of physical recordings and digital downloads was going to continue to diminish.” Aguirre WRT ¶ 45.

RESPONSE TO REQUEST NO. 18:

Copyright Owners object to this Request to the extent it seeks the production of information protected by the attorney-client privilege and/or work product doctrines. Copyright Owners further object to this Request as it seeks information unrelated to this proceeding, which the

Copyright Royalty Judges have repeatedly held. Copyright Owners also object to this Request as it substantially duplicates a request made by the Services in *Phonorecords III* which the Judges rejected and it is, if possible, even less proper in this proceeding. Copyright Owners will not be producing documents in response to this Request.

REQUEST NO. 19: All Documents concerning the negotiation of the Rejected Phonorecords IV Settlement, Aguirre WRT ¶¶ 8, 47-49, including all email and other communications between You and Record Companies concerning Record Companies’ alleged “adamant[] oppos[ition] to increasing” the mechanical rate for Subpart B services in the Current Proceeding, *id.* ¶ 49.

RESPONSE TO REQUEST NO. 19:

Copyright Owners object to this Request to the extent it seeks the production of information protected by the attorney-client privilege and/or work product doctrines. Copyright Owners further object to this Request as it seeks information unrelated to this proceeding, which the Copyright Royalty Judges have repeatedly held. Copyright Owners also object to this Request as it substantially duplicates a request made by the Services in *Phonorecords III* which the Judges rejected and it is, if possible, even less proper in this proceeding. Copyright Owners will not be producing documents in response to this Request.

REQUEST NO. 20: All analyses, memoranda, presentations, studies, surveys, and research findings concerning Your assessment of the costs or benefits of litigating the Subpart B rate in the Current Proceeding, including any analysis of where You should “allocate [Your] limited resources,” any “assessment of what sources of mechanical income were most valuable to rightsholders,” or any forecasts about the amount of resources You would have to devote to litigating any “costly and burdensome rate proceeding” with Record Companies. Aguirre WRT ¶ 47.

RESPONSE TO REQUEST NO. 20:

Copyright Owners object to this Request to the extent it seeks the production of information protected by the attorney-client privilege and/or work product doctrines. Copyright Owners further object to this Request as it seeks information unrelated to this proceeding, which the Copyright Royalty Judges have repeatedly held. Copyright Owners also object to this Request as

it substantially duplicates a request made by the Services in *Phonorecords III* which the Judges rejected and it is, if possible, even less proper in this proceeding. Copyright Owners will not be producing documents in response to this Request.

REQUEST NO. 21: All analyses, memoranda, presentations, studies, surveys, and research findings concerning “the values that private equity investors have been paying for a certain limited number of catalogues.” Aguirre WRT ¶ 8.

RESPONSE TO REQUEST NO. 21:

Copyright Owners object to this Request as duplicative of prior requests in this proceeding. Copyright Owners further object to this Request as unrelated to the Written Rebuttal Statement of Copyright Owners. Copyright Owners further object to this Request as unduly burdensome and disproportionate to the needs of this proceeding as it seeks “all” documents concerning a given subject. Copyright Owners will not be independently producing documents responsive to this Request, though responsive documents will be produced pursuant to the May 2, 2022 Order Granting in Part and Denying in Part Services’ Motion to Compel Production of Documents in this proceeding.

REQUEST NO. 22: All analyses, memoranda, presentations, studies, surveys, and research findings, concerning similarities or differences between the U.S. digital music market and the European digital music market. Bebawi WRT ¶ 8.

RESPONSE TO REQUEST NO. 22:

Copyright Owners object to this Request as it seeks the production of information that is not directly related to its Written Rebuttal Statement and is therefore not discoverable. Copyright Owners further object to this Request to the extent it calls for the production of documents that are not in the possession, custody or control of Copyright Owners or the Publisher Witnesses. Copyright Owners further object to this Request as vague in its use of “similarities or differences between the U.S. digital music market and the European digital music market.” Copyright Owners

further object to this Request as unreasonable and unduly burdensome, as it seeks the production of all documents concerning “similarities and differences between the U.S. digital music market and the European digital music market,” which is disproportionate to the needs of this proceeding. Subject to and without waiver of the foregoing objections and General Objections, Copyright Owners will produce documents that Sony Music Publishing locates following a reasonable and proportionate search of readily accessible sources.

REQUEST NO. 23: All Documents concerning the relationship between SOLAR and any music publisher. Bebawi WRT ¶ 10.

RESPONSE TO REQUEST NO. 23:

Copyright Owners object to this Request as it seeks the production of information that is not directly related to its Written Rebuttal Statement and is therefore not discoverable. Copyright Owners further object to this Request to the extent it calls for the production of documents that are not in the possession, custody or control of Copyright Owners or the Publisher Witnesses. Copyright Owners further object to this Request as unreasonable and unduly burdensome, as it seeks the production of all documents concerning “the relationship between SOLAR and any Music Publisher,” which is disproportionate to the needs of this proceeding. Copyright Owners will not be producing documents in response to this Request.

REQUEST NO. 24: All Documents concerning the musical-works licensing strategy or licensing Analysis of any Music Publisher, including but not limited to all Documents concerning U.S. musical-works licensing, European musical-works licensing, audiovisual licensing, differences in licensing strategy across markets, or differences in licensing across service types (e.g., audiovisual vs. audio streaming). Bebawi WRT ¶¶ 14, 23; Kokakis WRT ¶ 50.

RESPONSE TO REQUEST NO. 24:

Copyright Owners object to this Request as it seeks the production of information that is not directly related to its Written Rebuttal Statement and is therefore not discoverable. Copyright Owners further object to this Request to the extent it calls for the production of documents that are

not in the possession, custody or control of Copyright Owners or the Publisher Witnesses. Copyright Owners further object to this Request as unduly burdensome in that it seeks the production of all documents concerning global licensing strategy or analysis. Copyright Owners will not be producing documents in response to this Request.

REQUEST NO. 25: All analyses, memoranda, presentations, studies, surveys, and research findings supporting or relating to the calculations reflected in CO-Ex. 12.7. Bebawi WRT ¶ 29 n.10.

RESPONSE TO REQUEST NO. 25:

Copyright Owners object to this Request as unduly burdensome in that it calls for the production of “all” documents. Subject to and without waiver of the foregoing objection and Copyright Owners’ General Objections, Copyright Owners will produce documents that they locate following a reasonable and proportionate search of reasonably accessible records.

REQUEST NO. 26: All analyses, memoranda, presentations, studies, surveys, and research findings concerning the evolution over time of “music publishing agreements with songwriters.” Beekman WRT ¶ 7.

RESPONSE TO REQUEST NO. 26:

Copyright Owners object to this Request as it seeks the production of information that is not directly related to its Written Rebuttal Statement and is therefore not discoverable. Copyright Owners further object to this Request as unduly burdensome and disproportionate to the needs of this proceeding. Copyright Owners will not be producing documents in response to this Request.

REQUEST NO. 27: All agreements between Songwriters and Music Publishers requiring Songwriters to reimburse expenses paid by Music Publishers in *Phonorecords I*, *Phonorecords II*, *Phonorecords III*, or the Current Proceeding. Beekman WRT ¶ 16; Kelly WRT ¶ 22.

RESPONSE TO REQUEST NO. 27:

Copyright Owners object to this Request as it seeks the production of information that is not directly related to its Written Rebuttal Statement and is therefore not discoverable. Moreover, the cited testimony indicates that no such documents exist in any event, as “it [REDACTED]

[REDACTED]

[REDACTED]” (Beekman WRT ¶ 16 (emphasis added)) and “[REDACTED]

[REDACTED]

[REDACTED]” (Kelly WRT ¶ 22 (emphasis added).)

REQUEST NO. 28: All Documents concerning UMPG’s creation of the “music rights management system” referenced in paragraph 21 of the Beekman WRT.

RESPONSE TO REQUEST NO. 28:

Copyright Owners object to this Request as it seeks the production of information that is not directly related to its Written Rebuttal Statement and is therefore not discoverable. Copyright Owners further object to this Request as unduly burdensome and disproportionate to the needs of this proceeding and, as a summing up request, is more suited to a deposition question than document request. Copyright Owners will not be producing documents in response to this Request.

REQUEST NO. 29: All Documents concerning the two audits performed by Wayne Coleman that are discussed in the Beekman WRT. Beekman WRT ¶¶ 21, 23, 45, 47.

RESPONSE TO REQUEST NO. 29:

Copyright Owners object to this Request as unduly burdensome in that it calls for the production of “all” documents. Subject to and without waiver of the foregoing objection and Copyright Owners’ General Objections, Copyright Owners will produce documents that they locate following a reasonable and proportionate search of reasonably accessible records.

REQUEST NO. 30: All Documents concerning claims in audits performed by Wayne Coleman for “black box” income. Beekman WRT ¶ 45.

RESPONSE TO REQUEST NO. 30:

Copyright Owners object to this Request as unduly burdensome in that it calls for the production of “all” documents. Subject to and without waiver of the foregoing objection and

Copyright Owners' General Objections, Copyright Owners will produce documents that they locate following a reasonable and proportionate search of reasonably accessible records.

REQUEST NO. 31: Documents sufficient to identify (i) all audits that resulted in Music Publishers paying Songwriters inappropriately withheld royalties and (ii) any amounts paid to Songwriters as a result of such audits. Beekman WRT ¶ 21.

RESPONSE TO REQUEST NO. 31:

Copyright Owners object to this Request as it seeks the production of information that is not directly related to its Written Rebuttal Statement and is therefore not discoverable. Copyright Owners further object to this Request as unduly burdensome and disproportionate to the needs of this proceeding. Copyright Owners will not be producing documents in response to this Request.

REQUEST NO. 32: All analyses, memoranda, presentations, studies, surveys, and research findings of "controlled composition clauses." Beekman WRT ¶ 32.

RESPONSE TO REQUEST NO. 32:

Copyright Owners object to this Request as it seeks the production of information that is not directly related to its Written Rebuttal Statement and is therefore not discoverable. Copyright Owners further object to this Request as unduly burdensome and disproportionate to the needs of this proceeding. Copyright Owners will not be producing documents in response to this Request.

REQUEST NO. 33: All analyses, memoranda, presentations, studies, surveys, and research findings concerning the advances that Music Publishers pay to Songwriters, including but not limited to analyses or memoranda concerning the amount of an advance that a Music Publisher should pay to a particular Songwriter. Beekman WRT ¶¶ 30, 38; Kelly WRT ¶ 66.

RESPONSE TO REQUEST NO. 33:

Copyright Owners object to this request as duplicative. Copyright Owners object to this Request as it seeks the production of information that is not directly related to its Written Rebuttal Statement and is therefore not discoverable. Copyright Owners further object to this Request as unduly burdensome and disproportionate to the needs of this proceeding. Copyright Owners will

not be producing documents in response to this Request, though documents responsive to this Request will be produced in response to the May 2, 2022 Order Granting in Part and Denying in Part Services' Motion to Compel Production of Documents in this proceeding.

REQUEST NO. 34: All Documents concerning the allocation of lump-sum payments, breakage, or flat fees to Songwriters. Beekman WRT ¶ 40; Kelly WRT ¶¶ 34-35.

RESPONSE TO REQUEST NO. 34:

Copyright Owners object to this Request as it seeks the production of information that is not directly related to its Written Rebuttal Statement and is therefore not discoverable. Copyright Owners further object to this Request as overbroad, unduly burdensome and disproportionate to the needs of this proceeding. Subject to and without waiver of the foregoing objections or General Objections, Copyright Owners will produce documents that they locate following a reasonable and proportionate search of reasonably accessible records.

REQUEST NO. 35: Documents sufficient to show the [REDACTED]

[REDACTED] Beekman WRT ¶ 44.

RESPONSE TO REQUEST NO. 35:

Copyright Owners object to this Request as it seeks the production of information that is not directly related to its Written Rebuttal Statement and is therefore not discoverable. Copyright Owners further object to this Request as unduly burdensome and disproportionate to the needs of this proceeding and is duplicative of information that is contained in the hundreds of millions of pages of documents being produced pursuant to the Judge's recent order. On the basis of the foregoing objections and General Objections, Copyright Owners will not produce any further documents in response to this Request.

REQUEST NO. 36: Documents sufficient to show all instances in which an agreement between a Music Publisher and a Songwriter authorized the Music Publisher to charge an administrative,

equivalency, or other fee or charge but the Music Publisher declined to do so. Kelly WRT ¶ 36; Beekman WRT ¶¶ 41, 44.

RESPONSE TO REQUEST NO. 36:

Copyright Owners object to this Request as it seeks the production of information that is not directly related to its Written Rebuttal Statement and is therefore not discoverable. Copyright Owners further object to this Request as unduly burdensome and disproportionate to the needs of this proceeding and is duplicative of information that is contained in the hundreds of millions of pages of documents being produced pursuant to the Judge's recent order. Subject to and without waiver of the foregoing objections or General Objections, Copyright Owners will produce documents that they locate following a reasonable and proportionate search of reasonably accessible records.

REQUEST NO. 37: Documents sufficient to show the proportion of currently operative agreements between Music Publishers and Songwriters containing administration or equivalency fees. Beekman WRT ¶ 41.

RESPONSE TO REQUEST NO. 37:

Copyright Owners object to this Request as it seeks the production of information that is not directly related to its Written Rebuttal Statement and is therefore not discoverable. Copyright Owners further object to this Request as unduly burdensome and disproportionate to the needs of this proceeding. Subject to and without waiver of the foregoing objections and General Objections, Copyright Owners will produce documents that Sony Music Publishing locates following a reasonable and proportionate search of reasonably accessible records.

REQUEST NO. 38: All currently operative agreements between Music Publishers and PROs, including but not limited to PRO administrative agreements. Beekman WRT ¶¶ 68-70; Kelly WRT ¶¶ 9, 49-51.

RESPONSE TO REQUEST NO. 38:

Copyright Owners object to this Request as it is not directly related to the Written Rebuttal Statement of Copyright Owners and therefore is not discoverable. Subject to and without waiver of the foregoing objection and Copyright Owners' General Objections, Copyright Owners will produce documents that they locate following a reasonable and proportionate search of reasonably accessible records to the extent such documents have not already been produced in this proceeding.

REQUEST NO. 39: All Documents concerning fees charged to Music Publishers by PROs. Beekman WRS ¶¶ 67-70; Kelly WRS ¶¶ 9, 49-50, 56.

RESPONSE TO REQUEST NO. 39:

Copyright Owners object to this Request as it seeks the production of information that is not directly related to its Written Rebuttal Statement and is therefore not discoverable. Copyright Owners further object to this Request as unduly burdensome and disproportionate to the needs of this proceeding and is information that should be obtainable from the PROs. Copyright Owners will not be producing documents in response to this Request.

REQUEST NO. 40: All analyses, memoranda, presentations, studies, surveys, and research findings concerning the revenue-related strategies allegedly employed by the Services (e.g., revenue displacement, revenue diminution, revenue deferral). *See, e.g.,* Brodsky WRT ¶ 68; Cohan WRT ¶ 23; Eisenach WRS § IV.

RESPONSE TO REQUEST NO. 40:

Copyright Owners object to this Request as overbroad, unduly burdensome, and disproportionate to the needs of this proceeding. Copyright Owners further object to this Request to the extent it seeks production of information already produced in this proceeding or in the *Phonorecords III* proceeding and available to the Services, and also duplicates findings of the Judges in *Phonorecords III* that were affirmed by the D.C. Circuit. Copyright Owners further object to this Request to the extent it seeks the production of information not in the possession,

custody or control of Copyright Owners. Copyright Owners will not be producing documents in response to this Request.

REQUEST NO. 41: All Documents concerning the impact of “information asymmetry” on licensing negotiations. Eisenach WRS ¶¶ 109-111; *see also, e.g.*, Brodsky WRT ¶¶ 4, 7, 17; Kokakis WRT ¶ 45.

RESPONSE TO REQUEST NO. 41:

Copyright Owners object to this Request as it seeks the production of information that is not directly related to its Written Rebuttal Statement and is therefore not discoverable. Copyright Owners further object to this Request as unduly burdensome and disproportionate to the needs of this proceeding. Copyright Owners will not be producing documents in response to this Request.

REQUEST NO. 42: All Documents concerning the creation and operation of SCORE. Kelly WRT ¶¶ 12, 25-27.

RESPONSE TO REQUEST NO. 42:

Copyright Owners object to this Request as it seeks the production of information that is not directly related to its Written Rebuttal Statement and is therefore not discoverable. Copyright Owners further object to this Request as unduly burdensome and disproportionate to the needs of this proceeding. Copyright Owners will not be producing documents in response to this Request.

REQUEST NO. 43: All Documents concerning the creation and operation of the “Cash Out” service available through Score. Kelly WRT ¶ 26.

RESPONSE TO REQUEST NO. 43:

Copyright Owners object to this Request as it seeks the production of information that is not directly related to its Written Rebuttal Statement and is therefore not discoverable. Copyright Owners further object to this Request as unduly burdensome and disproportionate to the needs of this proceeding. Copyright Owners will not be producing documents in response to this Request.

REQUEST NO. 44: All analyses, memoranda, presentations, studies, surveys, and research findings concerning the business model used by “private equity and fund investors who, in recent

years, have poured hundreds of millions of dollars into buying existing successful song and record catalogues,” including but not limited to any analysis comparing these “private equity and fund investors” to traditional Music Publishers. Kelly WRT ¶ 46.

RESPONSE TO REQUEST NO. 44:

Copyright Owners object to this Request as duplicative of prior requests in this proceeding. Copyright Owners further object to this Request as it seeks the production of information that is not directly related to its Written Rebuttal Statement and is therefore not discoverable. Copyright Owners further object to this Request as unduly burdensome and disproportionate to the needs of this proceeding. Copyright Owners will not be producing documents in response to this Request.

REQUEST NO. 45: All analyses, memoranda, presentations, studies, surveys, and research findings concerning the relative value of Mechanical Royalties and Performance Royalties to Music Publishers and Songwriters. Kelly WRT ¶¶ 50-51.

RESPONSE TO REQUEST NO. 45:

Copyright Owners object to this Request as duplicative of prior requests in this proceeding. Copyright Owners further object to this Request as it seeks the production of information that is not directly related to its Written Rebuttal Statement and is therefore not discoverable. Copyright Owners further object to this Request as unduly burdensome and disproportionate to the needs of this proceeding. Subject to and without waiver of the foregoing objections and General Objections, Copyright Owners will produce documents that they locate after a reasonable and proportionate search of readily accessible sources.

REQUEST NO. 46: All Documents concerning [REDACTED] referenced in paragraph 65 of the Kelly WRT.

RESPONSE TO REQUEST NO. 46:

Copyright Owners object to this Request as unduly burdensome in that it calls for the production of “all” documents. Subject to and without waiver of the foregoing objection and

Copyright Owners' General Objections, Copyright Owners will produce documents that they locate following a reasonable and proportionate search of readily accessible sources.

REQUEST NO. 47: All Documents proposing to give or analyzing the possibility of giving a Songwriter an advance in excess of one million dollars, including but not limited to any analysis used by a Music Publisher used for internal approvals or submitted to an affiliated company for review and approval. Beekman WRT ¶ 38.

RESPONSE TO REQUEST NO. 47:

Copyright Owners object to this Request as duplicative of prior requests in this proceeding. Copyright Owners further object to this Request as it seeks the production of information that is not directly related to its Written Rebuttal Statement and is therefore not discoverable. Copyright Owners further object to this Request as unduly burdensome and disproportionate to the needs of this proceeding. Copyright Owners will not be producing documents in response to this Request but note that documents responsive to this Request will be produced pursuant to the May 2, 2022 Order Granting in Part and Denying in Part Services' Motion to Compel Production of Documents.

REQUEST NO. 48: All Documents concerning the creation and operation of the Songwriters Forward Initiative, including but not limited to all Documents memorializing the business rationale for creating the Songwriters Forward Initiative. Kelly WRT ¶ 67.

RESPONSE TO REQUEST NO. 48:

Copyright Owners further object to this Request as it seeks the production of information that is not directly related to its Written Rebuttal Statement and is therefore not discoverable. Copyright Owners further object to this Request as unduly burdensome and disproportionate to the needs of this proceeding. Subject to and without waiver of the foregoing objections and General Objections, Copyright Owners will produce documents that they locate after a reasonable and proportionate search of readily accessible sources.

REQUEST NO. 49: Documents sufficient to show (i) the number of Songwriters who allegedly benefited from the Songwriters Forward Initiative and (ii) the amount of each Songwriter's unrecouped advance as of July 20, 2021. Kelly WRT ¶ 67.

RESPONSE TO REQUEST NO. 49:

Copyright Owners object to this Request as duplicative of prior requests in this proceeding. Copyright Owners further object to this Request as it seeks the production of information that is not directly related to its Written Rebuttal Statement and is therefore not discoverable. Copyright Owners further object to this Request as unduly burdensome and disproportionate to the needs of this proceeding. Subject to and without waiver of the foregoing objections and General Objections, Copyright Owners will produce documents that they locate after a reasonable and proportionate search of readily accessible sources.

REQUEST NO. 50: All Documents concerning the creation and operation of the Songwriter Assistance wellness program, including but not limited to Documents sufficient to show the cost of the program. Kelly WRT ¶ 68.

RESPONSE TO REQUEST NO. 50:

Copyright Owners object to this Request as duplicative of prior requests in this proceeding. Copyright Owners further object to this Request as it seeks the production of information that is not directly related to its Written Rebuttal Statement and is therefore not discoverable. Copyright Owners further object to this Request as unduly burdensome and disproportionate to the needs of this proceeding. Subject to and without waiver of the foregoing objections and General Objections, Copyright Owners will produce documents that they locate after a reasonable and proportionate search of readily accessible sources.

REQUEST NO. 51: All Documents concerning [REDACTED] including but not limited to all Documents concerning [REDACTED] Kokakis WRT ¶¶ 23-24.

RESPONSE TO REQUEST NO. 51:

Copyright Owners object to this Request as it seeks the production of information that is not directly related to its Written Rebuttal Statement and is therefore not discoverable. Copyright

Owners further object to this Request as unduly burdensome and disproportionate to the needs of this proceeding. Copyright Owners will not be producing documents in response to this Request.

REQUEST NO. 52: All Documents concerning the contemplated or actual use of a Performance License or Performance Royalties as leverage in negotiations over a Mechanical License or Mechanical Royalties. *See, e.g.*, Brodsky WRS ¶ 78 (asserting that agreements negotiated with the Services “are not appropriate benchmarks . . . as they are made under the shadow of the compulsory license”); Eisenach WRS ¶ 108 (“Rates negotiated under the shadow of compulsory license do not reflect fair market value of the rights at issue and are therefore not appropriate benchmarks.”).

RESPONSE TO REQUEST NO. 52:

Copyright Owners object to this Request as it seeks the production of information that is not directly related to its Written Rebuttal Statement and is therefore not discoverable. Copyright Owners further object to this Request as unduly burdensome and disproportionate to the needs of this proceeding. Copyright Owners will not produce documents in response to this Request.

REQUEST NO. 53: All Documents concerning the Sound Recording Royalties charged by Record Companies to Interactive Streaming Services, including but not limited to all Documents concerning the impact of those rates (i) on the development of the interactive streaming market, (ii) on the Mechanical Royalties that music publishers are able to negotiate in the interactive streaming market, (iii) on the profitability of Music Publishers or the incomes of Songwriters; and (iii) on the profitability of Interactive Streaming Services. Eisenach WRS § VI.

RESPONSE TO REQUEST NO. 53:

Copyright Owners object to this Request as it seeks the production of information that is not directly related to its Written Rebuttal Statement and is therefore not discoverable. Copyright Owners further object to this Request as unduly burdensome and disproportionate to the needs of this proceeding. Copyright Owners will not be producing documents in response to this Request.

REQUEST NO. 54: All Documents concerning the Section 115 license acting as downward pressure or a cap on Performance Royalties or Mechanical Royalties.

RESPONSE TO REQUEST NO. 54:

Copyright Owners object to this Request as it seeks the production of information that is not directly related to its Written Rebuttal Statement and is therefore not discoverable. Copyright Owners further object to this Request as unduly burdensome and disproportionate to the needs of this proceeding. Copyright Owners will not be producing documents in response to this Request.

REQUEST NO. 55: All agreements, work papers, computer code, databases, raw data, spreadsheets, underlying analyses, and other Documents prepared, reviewed, or considered by each Copyright Owner expert witness in connection with the expert witness's Written Rebuttal Testimony, to the extent not already produced.

RESPONSE TO REQUEST NO. 55:

Copyright Owners object to this Request as it seeks the production of information that is not directly related to its Written Rebuttal Statement and is therefore not discoverable. Copyright Owners further object to this Request as unduly burdensome and disproportionate to the needs of this proceeding. Copyright Owners further object to this Request as beyond the scope of the participants' stipulation governing expert discovery in this proceeding. Copyright Owners will not be producing documents in response to this Request.

REQUEST NO. 56: All published or unpublished scholarly articles, or drafts of articles, written in whole or in part by each Copyright Owner expert witness that relates to the music publishing industry, the music recording industry, Interactive Streaming Services, music piracy, radio broadcasting, cable or terrestrial television broadcasting, or the delivery of music or audiovisual content to consumers in any format and by any medium, including over the Internet, to the extent not already produced.

RESPONSE TO REQUEST NO. 56:

Copyright Owners object to this Request to the extent it calls for the production of publicly available information. Copyright Owners' expert witnesses have identified their professional publications in connection with each of their reports. Copyright Owners will meet and confer concerning any specific requests that the Services may have concerning such publications.

REQUEST NO. 57: All Documents constituting or reflecting meetings, discussions or other Communications between each Copyright Owner expert witness and: (1) any fact witness; (2) any

Music Publisher personnel, NMPA personnel, NSAI personnel, Music Publisher representatives, NMPA representative, or NSAI representative; and (3) any other meetings, discussions, or Communications that any Copyright Owner expert considered in formulating the expert's opinions, to the extent not already produced.

RESPONSE TO REQUEST NO. 57:

Copyright Owners object to this Request as it seeks the production of information that is not directly related to its Written Rebuttal Statement and is therefore not discoverable. Copyright Owners further object to this Request as unduly burdensome and disproportionate to the needs of this proceeding. Copyright Owners further object to this Request as beyond the scope of the participants' stipulation governing expert discovery in this proceeding. Copyright Owners will not be producing documents in response to this Request.

REQUEST NO. 58: Each Document constituting a report, testimony (whether written or in deposition, trial, or hearing) or opinion, with exhibits, submitted by each Copyright Owner witness in any prior Copyright Arbitration Royalty Panel, Copyright Royalty Board, ASCAP, BMI, or other rate-setting or regulatory proceeding that discusses or otherwise relates to any of the subjects discussed in his or her Written Direct Testimony, as well as any such Document relating to Interactive Streaming, Non-Interactive Streaming, any Digital Music Licensee, difference among types of Digital Music Licensee, music piracy, the promotional or substitutional effect of Digital Music Licensee, the efforts of Music Publishers to have works available on any Interactive Streaming Service or terrestrial radio, Mechanical Licenses, Performance Licenses, copyright licenses with respect to sound recordings, benchmarking analyses of any type, and rate-setting analyses of any type, to the extent not already produced.

RESPONSE TO REQUEST NO. 58:

Copyright Owners object to this Request as duplicative of prior requests in this proceeding. Copyright Owners further object to this Request as it seeks the production of information that is not directly related to its Written Rebuttal Statement and is therefore not discoverable. Copyright Owners further object to this Request as unduly burdensome and disproportionate to the needs of this proceeding. Copyright Owners will not be producing documents in response to this Request.

REQUEST NO. 59: All analyses, memoranda, and presentations concerning the purpose of mechanical floors (e.g., a mechanical-only per-subscriber minimum) and all-in minima (e.g., an all-in per-subscriber minimum) in license agreements for Interactive Streaming, the Phonorecords

I Settlement, and the Phonorecords II Settlement, including, but not limited to, whether they are designed to protect against revenue deferral or displacement. *See, e.g.*, Brodsky ¶¶ 69-70; Cohan ¶ 23; Kokakis ¶ 13.

RESPONSE TO REQUEST NO. 59:

Copyright Owners object to this Request as it seeks the production of information that is not directly related to its Written Rebuttal Statement and is therefore not discoverable. Copyright Owners further object to this Request as unduly burdensome and disproportionate to the needs of this proceeding and it duplicates evidence and testimony in the record in *Phonorecords III*, including in the remand proceeding. Copyright Owners will not be producing documents in response to this Request.

REQUEST NO. 60: All analyses, memoranda, and presentations concerning the purpose of a Total Cost of Content rate calculation in license agreements for Interactive Streaming, the Phonorecords I Settlement, and the Phonorecords II Settlement including, but not limited to, whether it is designed to protect against revenue deferral or displacement. *See, e.g.*, Brodsky ¶ 70; Cohan ¶ 23; Kokakis ¶ 13.

RESPONSE TO REQUEST NO. 60:

Copyright Owners object to this Request as it seeks the production of information that is not directly related to its Written Rebuttal Statement and is therefore not discoverable. Copyright Owners further object to this Request as unduly burdensome and disproportionate to the needs of this proceeding. Copyright Owners will not be producing documents in response to this Request.

REQUEST NO. 61: All analyses, memoranda, presentations, studies, surveys, and research findings supporting or refuting the claim that “[v]oice control alone does not make a service less interactive or more limited[.]” Kokakis ¶ 31.

RESPONSE TO REQUEST NO. 61:

Copyright Owners object to this Request as overbroad, unduly burdensome and disproportionate to the needs of this proceeding. Subject to and without waiver of the foregoing

objections or General Objections, Copyright Owners will produce documents that they locate following a reasonable and proportionate search of reasonably accessible records.

REQUEST NO. 62: All analyses, memoranda, presentations, studies, surveys, and research findings supporting or refuting the claim that [REDACTED]. Eisenach ¶ 47.

RESPONSE TO REQUEST NO. 62:

Copyright Owners object to this Request as it seeks the production of information that is not directly related to its Written Rebuttal Statement and is therefore not discoverable. Copyright Owners further object to this Request as overbroad, unduly burdensome and disproportionate to the needs of this proceeding. Subject to and without waiver of the foregoing objections or General Objections, Copyright Owners will produce documents that they locate following a reasonable and proportionate search of reasonably accessible records.

REQUEST NO. 63: All analyses, memoranda, presentations, studies, surveys, and research findings supporting or refuting the claim that royalties based on a revenue prong and royalties based on per-subscriber minimum should be calibrated in license agreements related to Interactive Streaming. *See, e.g.,* Eisenach ¶ 167; Kokakis ¶ 670.

RESPONSE TO REQUEST NO. 63:

Copyright Owners object to this Request as it seeks the production of information that is not directly related to its Written Rebuttal Statement and is therefore not discoverable. Copyright Owners further object to this Request as overbroad, unduly burdensome and disproportionate to the needs of this proceeding. Subject to and without waiver of the foregoing objections or General Objections, Copyright Owners will produce documents that they locate following a reasonable and proportionate search of reasonably accessible records.

REQUEST NO. 64: All analyses, memoranda, presentations, studies, surveys, and research findings concerning consumers' willingness to pay for HD quality audio. *See* Flynn ¶ 43; Bebawi ¶ 16.

RESPONSE TO REQUEST NO. 64:

Copyright Owners object to this Request as it seeks the production of information that is not directly related to its Written Rebuttal Statement and is therefore not discoverable. Copyright Owners further object to this Request as unduly burdensome and disproportionate to the needs of this proceeding. Copyright Owners will not be producing documents in response to this Request.

REQUEST NO. 65: All Documents supporting the claim that Apple “use[s] music listening data to target and sell ads outside of music.” Heimlich ¶ 41; *see also id.* ¶ 36.

RESPONSE TO REQUEST NO. 65:

Copyright Owners object to this Request as it seeks the production of information that is not directly related to its Written Rebuttal Statement and is therefore not discoverable. Copyright Owners further object to this Request as overbroad, unduly burdensome and disproportionate to the needs of this proceeding. Subject to and without waiver of the foregoing objections or General Objections, Copyright Owners will produce documents that they locate following a reasonable and proportionate search of reasonably accessible records.

REQUEST NO. 66: All analyses, memoranda, presentations, studies, surveys, and research findings concerning the impact that smartphones, smart home speakers and other smart home devices, high-quality headphones, and wearable technology have had on consumers’ music listening habits, publishers’ and songwriters’ revenues, music distribution, and musical works licensing opportunities.

RESPONSE TO REQUEST NO. 66:

Copyright Owners object to this Request as it seeks the production of information that is not directly related to its Written Rebuttal Statement and is therefore not discoverable. Copyright Owners further object to this Request as unduly burdensome and disproportionate to the needs of this proceeding. Copyright Owners will not be producing documents in response to this Request.

REQUEST NO. 67: All Documents filed and orders issued in the *Phonorecords III* remand proceedings that have not yet been produced, including, but not limited to, the forthcoming determination in the *Phonorecords III* remand.

RESPONSE TO REQUEST NO. 67:

Copyright Owners object to this Request as improper and unrelated to its Written Rebuttal Statement. Subject to and without waiver of the foregoing objection and General Objections, Copyright Owners will produce documents responsive to this Request consistent with the Orders of the Copyright Royalty Judges in this proceeding.

REQUEST NO. 68: All Documents produced in the Current Proceeding.

RESPONSE TO REQUEST NO. 68:

Copyright Owners object to this Request as improper and unrelated to its Written Rebuttal Statement. Participants have been producing documents to all other participants' outside counsel, subject to compliance with Orders applicable to these proceedings.

REQUEST NO. 69: For each Music Publisher, Documents sufficient to show all revenue that Music Publisher received from apps distributed through the Apple App Store, Google Play, and Amazon, broken down monthly or at whatever level of detail such information is maintained in the ordinary course of business.

RESPONSE TO REQUEST NO. 69:

Copyright Owners object to this Request as it seeks the production of information that is not directly related to its Written Rebuttal Statement and is therefore not discoverable. Copyright Owners further object to this Request as unduly burdensome and disproportionate to the needs of this proceeding. Copyright Owners will not be producing documents in response to this Request.

REQUEST NO. 70: For each Music Publisher, Documents sufficient to show the percentage of revenue the Music Publisher received from apps distributed through the Apple App Store, Google Play, and Amazon, that is attributable to subscribers or users joining the app through the Apple App Store, Google Play, and Amazon, respectively, broken down monthly or at whatever level of detail such information is maintained in the ordinary course of business.

RESPONSE TO REQUEST NO. 70:

Copyright Owners object to this Request as it seeks the production of information that is not directly related to its Written Rebuttal Statement and is therefore not discoverable. Copyright

Owners further object to this Request as unduly burdensome and disproportionate to the needs of this proceeding. Copyright Owners will not be producing documents in response to this Request.

Dated: May 13, 2022
New York, New York

PRYOR CASHMAN LLP



By: _____

Benjamin K. Semel
Frank P. Scibilia
Donald S. Zakarin
7 Times Square
New York, New York 10036
(212) 421-4100
bsemel@pryorcashman.com
fscibilia@pryorcashman.com
dzakarin@pryorcashman.com

Attorneys for Copyright Owners

Proof of Delivery

I hereby certify that on Tuesday, May 24, 2022, I provided a true and correct copy of the Apple and Amazon's Motion to Compel Copyright Owners to Produce Documents - Public to the following:

Warner Music Group Corp., represented by Steven R. Englund, served via E-Service at senglund@jenner.com

Google LLC, represented by Gary R Greenstein, served via E-Service at ggreenstein@wsgr.com

Powell, David, represented by David Powell, served via E-Service at davidpowell008@yahoo.com

Spotify USA Inc., represented by Joseph Wetzel, served via E-Service at joe.wetzel@lw.com

Joint Record Company Participants, represented by Susan Chertkof, served via E-Service at susan.chertkof@riaa.com

UMG Recordings, Inc., represented by Steven R. Englund, served via E-Service at senglund@jenner.com

Johnson, George, represented by George D Johnson, served via E-Service at george@georgejohnson.com

Sony Music Entertainment, represented by Steven R. Englund, served via E-Service at senglund@jenner.com

Zisk, Brian, represented by Brian Zisk, served via E-Service at brianzisk@gmail.com

Copyright Owners, represented by Benjamin K Semel, served via E-Service at Bsemel@pryorcashman.com

Pandora Media, LLC, represented by Benjamin E. Marks, served via E-Service at benjamin.marks@weil.com

Signed: /s/ Mary C Mazzello